Office-Supreme Court, U.S.
FILED
APR 15 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-687

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

ARTHUR YOUNG & COMPANY, ET AL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

CARL D. LIGGIO
(Counsel of Record)
Arthur Young & Company
277 Park Avenue
New York, New York 10172
(212) 407-2367
Attorneys for Respondent
Arthur Young & Company

WILLIAM ELDRED JACKSON
(Counsel of Record)
Millbank, Tweed, Hadley
& McCloy
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-5000
Attorneys for Respondent
Amerada Hess Corporation

PETITION FOR WRIT OF CERTIORARI FILED, OCTOBER 20, 1982
CERTIORARI GRANTED, FEBRUARY 22, 1983

INDEX*

1.	Docket Entries	1
2.	Index to Record on Appeal and Clerk's Certificate	4
3.	Petition to Enforce Internal Revenue Summons	8
4.	Affidavit of G. Robert Armstrong in Support of Order to Show Cause	11
5.	Summons and Certificate of Service of Summons and Notice	15
6.	Answer of Amerada Hess	18
7.	Answer of Arthur Young	20
8.	Affidavit of Carl D. Liggio in Opposition to Petition	22
9.	Affidavit of Bruce M. Greenwald in Opposition to Petition	38
10.	Affidavit of Roger B. Oresman in Opposition to Petition	39
11.	Affidavit of Katherine J. Trager in Response to Opposing Affidavits	52
12.	Supplemental Affidavit of G. Robert Armstrong in Response to Opposing Affidavits	55
13.	Affidavit of Kenneth J. Kalemba	57
14.	Affidavit of Anthony Caputo	59
15.	Affidavit of Robert G. Morvillo in Response to Trager Affidavit	61
16.	Affidavit of Robert G. Morvillo in Response to Government's Memorandum of Law and Supplemental Affidavits	63
17.	Rebuttal Affidavit of Katherine J. Trager	74
18.	Affidavit of Harry Reiter in Support of Petition	76
19.	Transcript of Proceedings Held in the United States District Court for the Southern District of New York on January 8, 1980	80
20.	Affidavit of Robert G. Morvillo in Support of Motion	89

*The District Court's opinion, the opinion of the Court of Appeals for the Second Circuit, and its order denying the United States' petition for rehearing appear at pp. 1a-41a of the United States' Petition for a Writ of Certiorari and have not been reprinted here.

21. Affidavit of Anthony Caputo 98
22. Affidavit of G. Robert Armstrong 100
23. Reply Affidavit of Robert G. Morvillo 103
24. Order and Judgment of the United States District Court for the Southern District of New York, entered February 26, 1981 106
25. Order Granting Certiorari 108

DOCKET ENTRIES

Date	Proceedings
10/12/79	Filed government's affidavit & petition to enforce & show cause order requiring respondent to appear in room 506 at 10:30 A.M. on 10/30/79 at USCH, N.Y.N.Y. Duffy, J. Filed government's memo in support
10/31/79	Filed stipulation & order that Arthur Young & any intervening party have until 11/6/79 to file responsive papers. & petitioners hearing is adjourned to 11/13/79. Cooper, J.
11/30/79	Filed affidavit of Robert G. Morvillo attorney for respondent in support of motion to intervene & show cause order, petitioner to appear at USCH S.D. N.Y.N.Y. on 12/4/79 at 10:30 A.M. room 506. Cooper, J.
112/5/79	Filed respondent's affidavit & notice of motion for a stay in this proceeding., Returnable 12/18/79 rm. 506 at 10:30 A.M. at USCH, N.Y.N.Y. Filed memo of law.
12/12/79	Filed stipulation & order adjourning hearing as follows., Respondent 12/26/79 for Responsive papers, Petitioner shall have until 1/4/80 to file reply papers and hearing on petitioner's application is adjourned to 1/8/80 part 1 rm. 506 at 10:30 A.M. Gagliardi, J.
12/17/79	Filed affidavit of Katherine J. Trager. Filed government's memo of law in opposition to motion for a stay or transfer of this proceeding.
12/28/79	Filed answer to petition to enforce IRS Summons. Filed memo in opposition to petitioner's request to enforce IRS.
12/31/79	Filed notice of deposition of Kenneth J. Kalemba. Filed Affidavit in opposition of Roger B. Oresman. Filed memo of Amerada Hess in opposition to petition seeking enforcement
1/7/80	Filed affidavit of Katherine J. Trager. Filed supplemental affidavit of G. Robt. Armstrong. Filed affidavit of Kenneth J. Kalemba. Filed affidavit of Anthony Caputo. Filed government's memo of law in support of petition to enforce an IRS Summons.
1/8/80	Filed affidavit of Robt. G. Morvillo. Filed transcript of record of proceedings dated 12/19/79 before Hon. Werker.
1/8/80	Filed memo endorsed on notice of motion filed 12/5/79., Motion denied. D[illegible] J.
1/11/80	Filed affi[illegible]t in response to government's memo of law by respondent. Filed surreply memo of Arthur Young & Co.

Date	Proceedings
2/16/80	Filed rebuttal affidavit of Katherine J. Trager
4/14/80	Filed transcript of record of proceedings dated 12/19/79 before Werker, J.
6/18/80	Filed supplemental memo of law in support of petition to enforce an IRS summons by govt.
8/26/80	Filed transcript proceedings dated 6/17/80 before Duffy, J.
8/28/80	Filed opinion #50511., Respondent is directed to comply w/IRS summons of 4/17/78 directing it to make available requested documents pertaining to Amerada Hess as indicated. Duffy, J.
9/9/80	Filed stipulation & order that time to move by Respondent is extended from 8/26/80 to 9/19/80. Carter, J.
9/22/80	Filed affidavit of Robert G. Morvillo, Esq. & notice of motion for reargument & relief from order of 8/26/80. Returnable 10/28/80 at 10:00 A.M. at USCH N.Y.N.Y. Rm. 443 Filed memo in support of motion. Filed Appendix to affidavit of Robt. G. Morvillo volume 1-2 Before Judge Duffy.
11/7/80	Filed government's stipulation & order returnable 12/2/80 at 10:00., Petitioners responsive papers shall be served before 11/24/80 as indicated. Duffy, J.
11/25/80	Filed affidavit of Anthony Caputo & G. Robert Armstrong. Filed memo of law in opposition to motion for reargument of & relief from Courts order of 8/26/80.
12/8/80	Filed reply memo of Robt. Morvillo
1/8/81	Filed memo endorsed on notice of motion for reargument filed 9/22/80., Motion for reconsideration is granted my original is adhered to & reaffirmed. Duffy, J.
2/9/81	Filed notice of substitution of counsel., That Wm. M. Tendy acting USA is to substitute John S. Martin for petitioner and it is effective nunc pro tunc as to all papers previously filed in this proceeding.
*1/30/81	Filed government's affidavit, copy of order & judgment & notice of motion for clarification of Courts 8/26/80 opinion., Returnable 2/9/81 rm. 443 at 9:30 A.M. at USCH, N.Y.N.Y. Order & Judgment signed by Duffy, J.
2/24/81	Filed memo endorsed on notice of motion filed 1/30/81. There being no opposition, Motion is granted. Duffy, J.

Date	Proceedings
2/26/81	Filed order & judgment that Courts opinion dated 8/26/80 be modified to delete therefrom the word "workpapers" from last line of page 12 & from fifth line of page 14., and that the petition of USA to enforce IRS summons on respondent Arthur Young & Co. on 4/17/78 is granted to extent set forth as indicated Duffy, J.
3/2/81	Filed stipulation & order that execution of order & judgment is stayed pending determination of appeal as indicated. Knapp, J.
3/9/81	Filed notice of appeal by Respondent Arthur Young & Co., & by Respondent-Intervenor Amerada Hess Corp.
3/12/81	Filed letter dated 2/9/81 from Arthur addressed to Hon. Kevin T. Duffy & signed by Carl D. Liggio.
3/13/81	Filed stipulation & order making various documents a part of the records as indicated. Duffy, J.

Docket No. M-18-304
Judge: Duffy

UNITED STATES OF AMERICA, PETITIONERS-APPELLEE,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT-APPELLANT,

AND

AMERADA HESS CORPORATION,
RESPONDENT-INTERVENOR-APPELLANT

INDEX TO RECORD ON APPEAL

Docket Entries ..... A-U

List of documents	*Document*
Order to show cause by Duffy, J., returnable 10/30/79, with attached petition to enforce IRS summons and affidavit of G. Robert Armstrong in support; memorandum order dated 12/19/79, endorsed by Werker, J., adjourning return date to 1/8/81	1
Memorandum of law in support of petition to enforce IRS summons	2
Stipulation and order by Cooper, J., dated 10/30/79, permitting Arthur Young & Company ("Arthur Young") and any intervening party until 11/6/79 to file responsive papers and adjourning hearing to 11/13/79	3
Order to show cause why the motion of Amerada Hess Corporation ("Amerada Hess") to intervene should not be granted, by Cooper, J., returnable 12/4/79 with affidavit of Robert G. Morvillo in support of motion; memorandum order dated 12/4/79, endorsed by Gagliardi, J., granting motion on consent of United States in open court	4
Notice of motion returnable 12/18/79 for an order staying the proceeding or transferring venue with affidavit of Robert G. Morvillo in support of motion; answer of Amerada Hess to petition attached as exhibit A; memorandum order dated 1/8/81 endorsed by Duffy, J., denying motion	5
Memorandum of law in support of motion	6
Stipulation and order by Gagliardi, J., adjourning hearing to 1/8/80 with scheduled dates for filing of papers	7
Affidavit of Katherine Trager in opposition to motion for stay or transfer	8
Memorandum of law in opposition to motion for a stay or transfer of proceeding	9

Answer of Arthur Young to petition with affidavits of Carl D. Liggio and Bruce M. Greenwald	10
Memorandum of law of Arthur Young in opposition to petition to enforce IRS summons	11
Intervenor Amerada Hess notice of deposition of Kenneth J. Kalemba	12
Affidavit of Roger B. Oresman in opposition to petition to enforce IRS summons	13
Memorandum of law of Amerada Hess in opposition to petition to enforce IRS summons	14
Affidavit of Katherine J. Trager in response to opposing affidavits	15
Supplemental affidavit of G. Robert Armstrong	16
Affidavit of Kenneth J. Kalemba	17
Affidavit of Anthony Caputo	18
Memorandum of law in support of petition to enforce IRS summons	19
Affidavit of Robert G. Morvillo in response to Trager affidavit	20
Transcript of record of proceedings, dated 12/19/79, before Werker, J.	21
Affidavit of Robert G. Morvillo in response to government's memorandum of law and supplemental affidavits	22
Surreply memorandum of law by Arthur Young	23
Rebuttal affidavit of Katherine J. Trager	24
Certified copy of transcript of record of proceedings, dated 12/19/79, before Werker, J.	25
Transcript of record of proceedings, dated 1/8/80, before Duffy, J.	26
Supplemental memorandum of law in support of petition to enforce IRS summons	27
Transcript of record of proceedings, dated 6/17/80, before Duffy, J.	28
Opinion and order by Duffy, J., #50511, directing compliance with IRS summons of 4/17/78, dated 8/26/80	29
Stipulation and order by Carter, J., extending respondents time to move from 8/26/80 to 9/19/80	30
Notice of motion returnable 10/28/80 for reargument and relief from 8/26/80 order; memorandum order, dated 1/8/81, endorsed by Duffy, J., granting motion for reconsideration and affirming original order	31
Affidavit of Robert G. Morvillo in support of motion	32

Memorandum of law in support of motion	33
Appendix to affidavit of Robert G. Morvillo (in two volumes)	34/35
Stipulation and order by Duffy, J., making motion returnable 12/2/80 and setting petitioner's time to serve responsive papers	36
Affidavits of Anthony Caputo and G. Robert Armstrong in opposition	37
Memorandum of law in opposition to motion for reargument and relief from order	38
Stipulation and order by Duffy, J., making Rule 60(b) and Rule 9(m) motions returnable 12/9/80	39
Reply affidavit of Robert G. Morvillo	40
Notice of motion returnable 2/9/81 for entry of judgment and clarification of opinion dated 8/26/81 with affidavit of Leona Sharp in support; memorandum order, dated 2/23/81, endorsed by Duffy, J., granting the motion	41
Notice of substitution of counsel	42
Order and judgment enforcing IRS summons by Duffy, J., dated 2/23/81 and entered by Clerk of Court 2/26/81	43
Stipulation and order by Knapp, J., staying execution of order and judgment pending determination of appeal	44
Notice of Appeal by respondent Arthur Young & Co. and by respondent intervenor Amerada Hess Corp.	45/45A
Letter dated 2/9/81 from Arthur Young by Carl D. Liggio addressed to Hon. Kevin T. Duffy	46
Stipulation and order by Duffy J. making various documents a part of the record as indicated	47
Clerk's Certificate	48

No. M-18-304
Judge: (KTD)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

ARTHUR YOUNG & COMPANY, RESPONDENT-APPELLANT

and

AMERADA HESS CORPORATION,
RESPONDENT-INTERVENOR-APPELLANT

CLERK'S CERTIFICATE

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York do hereby certify that the certified copy of docket entries lettered A-U, and the original filed papers number 1 thru 48, inclusive constitute the record on appeal in the above entitled proceedings except for the following missing documents:

DATE FILED	*PROCEEDINGS*
11/25/80	Memorandum of law of the United States in opposition to the motion for reargument
12/8/80	Affidavit of Robert G. Morvillo in response to affidavits in opposition to motion for reargument

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 16th day of March, in the year of our Lord, One thousand nine hundred and eighty one.

/s/ RAYMOND F. BURGHARDT
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER

v.

ARTHUR YOUNG & COMPANY, RESPONDENT

**PETITION TO ENFORCE
INTERNAL REVENUE SERVICE SUMMONS**

The United States of America, by its attorney, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, alleges on information and belief:

1. This is a proceeding brought under the authority of Section 7402(b) and 7604(a) of the Internal Revenue Code of 1954, 26 U.S.C. §§ 7402(b) and 7604(a), judicially to enforce an Internal Revenue Service summons.

2. The respondent, Arthur Young & Company, is a corporation authorized to do business within the State of New York with an office for the transaction of business located at 277 Park Avenue, New York, New York, within the jurisdiction of this Court.

3. G. Robert Armstrong is employed as a Special Agent in the Office of the District Director of Internal Revenue, Newark District, with a post of duty at Asbury Park, New Jersey.

4. Special Agent Armstrong is conducting an investigation with Revenue Agent Anthony Caputo, a purpose of which is to ascertain the correctness of the tax return filed by Amerada Hess Corporation for the 1972, 1973, and 1974 tax years. The nature of this investigation is more fully set forth in the Special Agent's affidavit, annexed as Exhibit A.

5. The respondent is in possession or control of books, records and other papers or has knowledge relating to the above described investigation.

6. On April 17, 1978, an Internal Revenue Service summons, a copy of which is annexed as Exhibit B, was duly issued directing the respondent to appear to testify and pro-

duce for examination books, records and other papers more fully described in the summons. A copy of this summons was served on the respondent, through Carl D. Liggio, as counsel for Arthur Young and Company, at the time and in the manner indicated on Exhibit B at page 2.

7. The books, papers, records or other data sought by the summons are not in petitioner's possession.

8. In this proceeding, petitioner seeks production of the records and documents described in numbered items 1 through 5, 7 through 10, 12 through 17 of the summons. The testimony and documents sought may be relevant to and can reasonably be expected to cast light upon the correctness of the tax returns filed by the taxpayer for the years under investigation.

9. In accordance with Section 7609(a) of the Internal Revenue Code of 1954, 26 U.S.C. § 7609(a), notice of service of the summons and copies of the summons were sent to the taxpayer by registered or certified mail on April 18, 1978, as is indicated on Exhibit B at page 2.

10. By letter dated April 21, 1978, the taxpayer directed resondent not to comply with the summons. A copy of this letter is attached as Exhibit C.

11. Respondent did not appear on the return date of the summons, and its refusal to comply with the summons continues to date.

12. It is the practice of this Court to proceed by Order to Show Cause in these matters.

13. No previous application has been made for the order or relief sought.

WHEREFORE, the petitioner respectfully prays:

1. That this Court enter an order directing the respondent to show cause why the respondent should not comply with and obey the attached summons;

2. That this Court enter an order directing the respondent to obey the summons by ordering the production of the records called for in items 1 through 5, 7 through 10, and 12 through 17 of the summons before any proper officer of the Internal Revenue Service, at such time and place as hereafter may be fixed by such officer and by ordering the respondent to appear for the purpose of giving testimony

concerning the correctness of the taxpayer's tax returns as to each or any of the years under investigation; and

3. That this Court grant such other and further relief as it deems just and proper.

Dated: New York, New York
October 5, 1979

ROBERT B. FISKE, JR.
UNITED STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK
ATTORNEY FOR PETITIONER

/S/ KATHERINE J. TRAGER

KATHERINE J. TRAGER, Special
Assistant United States Attorney
Office and Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-9165

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

AFFIDAVIT

G. ROBERT ARMSTRONG, being duly sworn deposes and says:

1. I am employed as a Special Agent in the Office of the District Director of Internal Revenue, Newark District, with a post of duty at Asbury Park, New Jersey.

2. In my capacity as a Special Agent, I, together with Revenue Agent Anthony Caputo of the Examination Division, am conducting an investigation, one purpose of which is to ascertain the correctness of the tax returns filed by Amerada Hess Corporation (the "taxpayer") for the years 1972, 1973, and 1974.

3. This is a joint investigation conducted by the Examination and Criminal Investigation Divisions. The investigation is continuing. No recommendation for criminal prosecution has been made by the Internal Revenue Service to the Department of Justice with respect to the matters under investigation. Indeed, I have not yet made, and am not yet in a position to make, any recommendation one way or the other to my supervisor pending further investigation.

4. Before I joined the investigation in June, 1978, Special Agent Kenneth Kalemba issued an Internal Revenue Service summons directing the respondent to appear before him to testify and produce for examination the books, records and other documents described in the summons, a copy of which is annexed to the Petition as Exhibit B. This summons was issued as part of the investigation and with the approval of the Group Manager. (See Exhibit B.)

5. Thereafter, the summons was personally served on respondent at the time and in the manner indicated by Exhibit B at page 2.

6. In accordance with Section 7609(a) of the Internal Revenue Code of 1954, as amended, notice of service of the summons and copies of the summons were sent by certified or registered mail to the taxpayer in the manner indicated by Exhibit B at page 2.

7. Subsequently, the taxpayer instructed respondent not to comply with the summons. (See Exhibit C)

8. The respondent did not appear on the return date of the summons or otherwise comply with the summons. The refusal to comply with the summons continues to the date of this affidavit.

9. The books, records or other data sought by the summons are not in the possession of the Internal Revenue Service.

10. The taxpayer has disclosed that it maintained a fund called a "special disbursement account." From this fund, it made political contributions, some of which were reimbursed to the actual contributor, and charged to "legal fees," gave gifts to foreign government employees and deducted the same as "other deductions;" gave sums to members of local police and fire departments and deducted the same as "cleaning services," made payments, which were deducted, to a foreign "expeditor," and engaged in other possibly illegal activity. The taxpayer formed a Special Committee of its Board of Directors to investigate the practices of the corporation and its subsidiaries with respect to cash funds, payment to foreign government officials, and illegal, nondeductible, or questionable payments. A Report to the Board of Directors by the Special Committee regarding the questionable payments disclosed the respondent's participation in the Special Committee's investigation. Further, during the tax years in question, respondent received accounting fees from the taxpayer. The respondent has in its possession, custody or control the documents, records and other papers itemized in the summons and sought herein.

11. The following is a description of the items listed in the summons which are sought in this proceeding.

Numbered Item	*Description*

1. *Engagement Letter*—contract between the respondent and the taxpayer specifying what services the respondent is to perform, and in what areas the audit should be conducted.
2. *Management Letter*—letter from the respondent to the taxpayer describing the deficiencies in the taxpayer's records.
3. *Representation Letter*—letter from the respondent to the taxpayer informing the taxpayer's Board of Directors and the stockholders what financial records were audited.
4. *History File*—File concerning any item of importance having to do with the taxpayer, its divisions or subsidiaries.
5. *Standard Workpaper Index*—a preprinted form in which all workpapers of the respondent are indexed.
7. *Workpaper Review File*—List of the objectives of the audit and the employees of the respondent who worked on each area audited.
8. *Engagement Planning File*—internal memorandum of respondent, which discusses the areas which should be explored in the audit.
9. *Confirmation Control File*—contains checks of the accounts receivable and accounts payable by a letter out to the customers of the taxpayer asking for verification of certain amounts.
10. *Significant or Subsequent Events File*—document complied by the Senior or the In-Charge Accountant, who brings the audit up to date since the audit was completed. This document mentions any significant events that have happened since the time the audit was completed.
12. *Audit Workpapers File*—papers prepared by the respondent during its audit of the taxpayer.
13. Tax Pool Analysis File—(Tax Contingency File) File containing a memorandum, letter, or other document, which recommends to the taxpayer that

possible contingent liability for taxes be set up. For example, if the taxpayer had paid bribes overseas and this was discovered by the respondent, then the respondent would have the taxpayer set up a contingent liability for taxes. The contingent liability is created in case the Internal Revenue Service disallows the deduction for the bribes paid overseas.

14. Files prepared during the course of work performed for the Special Committee referred to above.
15. The names of the partner in charge, management partner and/or senior auditor of respondent who directed the audit of the taxpayer.
16. Any other information pertinent to the audit of taxpayer covering the years 1972, 1973, and 1974.
17. All workpapers, reports, records, correspondence, reconciliations and information relative to the United States Corporate Income Tax Returns (Forms 1120) of taxpayer that were prepared by respondent or under the supervision of respondent for the calendar years 1972, 1973 and 1974.

It is necessary to examine the documents, records and other papers described above and to take the testimony of respondent in order to ascertain the correctness of the tax returns filed by the taxpayer for the years under investigation.

/s/ G. ROBERT ARMSTRONG

G. ROBERT ARMSTRONG
Special Agent,
Internal Revenue Service

Sworn to before me this
19th day of July, 1979.

/s/ LAWRENCE MASON

LAWRENCE MASON
Notary Public

Form 2039
(Rev. 3-77)

Summons

In the matter of the tax liability of
AMERADA HESS CORPORATION
1 Hess Plaza
Woodbridge, New Jersey

Internal Revenue District of Newark

Periods 1972, 1973 and 1974

The Commissioner of Internal Revenue

To ARTHUR YOUNG & COMPANY Through CARL O. LIGGIO as Counsel for ~~as a partner of ARTHUR YOUNG & CO.~~ Arthur Young & Co.
277 Park Avenue
At New York, New York

You are hereby summoned and required to appear before Special Agent Kenneth J. Kalemba an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

See Attached

Business address and telephone number of Internal Revenue Service officer named above:

IRS, Intelligence Division, P.O. Box 1137, Asbury Park, NJ 07712 201-775-2700

Place and time for appearance:

at IRS, Intelligence Division, 970 Broad Street, Newark, NJ 07101 (Room 1404)

on the 4 day of MAY 19 78 at 11 or o'clock A M.

Issued under authority of the Internal Revenue Code

this 17 day of April 19 78

Kenneth Kalemba
Signature of Issuing Officer — Special Agent, Title

John Kinnear by KJK
Signature of Approving Officer (if applicable) — Group Manager, Title

Original to be retained by IRS

EXHIBIT B

Form 2039 (Rev. 3-77)

Certificate of Service of Summons and Notice

(Pursuant to section 7603, Inter. Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time
4/17/78	10.30 AM

How Summons Was Served

☒ I handed an attested copy of the summons to the person to whom it was directed.

Carl D. Liggio

☐ I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any).

Signature: Kenneth Kaleda

Title: Special Agent

This certificate is made to show compliance with section 7609, Internal Revenue Code. This certificate applies only to summonses served on third-party recordkeepers and not to summonses served on other third parties or any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Form 2039-D) to the person named below on the date and in the manner indicated.

Date of Giving Notice: 4/18/78 Time: Mail

Name of Noticee: Carl T. Tursi, Secretary - Amerada Hess Corp

Address of Noticee (if mailed): 1185 Ave. Americas, N.Y.C.

How Notice Was Given

☒ I gave notice by certified or registered mail to the last known address of the noticee.

☐ I gave notice by handing it to the noticee.

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).

☐ In the absence of a last known address of the noticee, I left the notice with the person summoned.

☐ No notice is required.

Signature: Kenneth Kaleda

Title: Special Agent

Form 2039 (Rev. 3-77)

The Following Documents Relating To Amerada Hess Corporation

All For The Years 1972 Through 1974:

1. Engagement letter(s)
2. Management letter(s)
3. Representation letter(s)
4. History file(s)
5. Standard workpaper index(s)
6. Administrative file(s)
7. Workpaper review file(s)
8. Engagement planning file(s)
9. Confirmation control file(s)
10. Significant events file(s)
11. Audit program file(s)
12. Audit workpaper's file(s)
13. Tax pool analysis file(s)
14. File(s) prepared during the course of work performed for the "special committee", including agreed procedures, selection process, reports, schedules and other workpapers
15. The name of the partner in charge, engagement partner and/or senior auditor who directed the audit of Amerada Hess Corporation
16. Any other information pertinent to the audit of Amerada Hess Corporation covering the years 1972, 1973 and 1974
17. All workpapers, reports, records, correspondence, reconciliations and information relative to the United States Corporate Income Tax Returns (Forms 1120) of Amerada Hess Corporation that were prepared by Arthur Young & Company or under the supervision of Arthur Young & Company for the calendar years 1972, 1973 and 1974.

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 79–1805

UNITED STATES OF AMERICA, PETITIONER

v.

ARTHUR YOUNG & COMPANY, RESPONDENT.

ANSWER OF RESPONDENT-INTERVENOR AMERADA HESS CORPORATION TO PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

Respondent-intervenor Amerada Hess Corporation (hereinafter "Amerada") as its answer to the petition, alleges as follows:

I. Admits the averments contained in paragraphs 1, 2, 3, 9, 10 and 13.

II. Denies the averments contained in paragraphs 4 and 3.

III. Admits upon information and belief the averments contained in paragraphs 6 and 11.

IV. Denies knowledge or information sufficient to form a belief as to the averments contained in paragraphs 7 and 12.

V. Denies the averments contained in paragraph 8 except admits that the petitioner in this proceeding seeks the documents referred to in paragraph 8.

AFFIRMATIVE DEFENSES

FIRST: The summons was not issued in good faith because it was issued solely for the purposes of gathering evidence for a criminal prosecution of Amerada and the Internal Revenue Service had no intention of pursuing any civil remedies with regard to the matters raised in the petition.

SECOND: The summons was not issued in good faith because it was issued to harrass and punish respondent-intervenor for its failure to cooperate with the aforesaid criminal investigation.

THIRD: The summons is unduly broad and burdensome and seeks documents that are not relevant to any legitimate tax inquiry.

FOURTH: The documents sought in paragraph 14 of the summons are protected by the work-product privilege.

FIFTH: The Internal Revenue Service is as a matter of law and policy not entitled to the documents requested in paragraph 13 of the summons. *United States* v. *Coopers & Lybrand*, 550 F.2d 615 (10th Cir. 1977).

SIXTH: The long delay in instituting this enforcement proceeding constitutes a waiver of any rights petitioner may have had to compel enforcement of the summonses.

WHEREFORE, the respondent-intervenor respectfully prays:

1. That this Court enter an order dismissing the petition.
2. That this Court render such other and further relief as is just and proper.

Dated: New York, New York
November 29, 1979

MILBANK, TWEED, HADLEY & McCLOY
One Chase Manhattan Plaza
New York, New York 10005

/S/ ROBERT G. MORVILLO
OBERMAIER, MORVILLO,
ABRAMOWITZ & FITZPATRICK
1290 Avenue of the Americas
New York, New York 10019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER

v.

ARTHUR YOUNG & COMPANY, RESPONDENT

and

AMERADA HESS CORPORATION, INTERVENOR.

ANSWER TO PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

ARTHUR YOUNG & COMPANY ("Arthur Young"), by its attorney, Carl D. Liggio, answers the petition as follows:

1. It admits the allegations of paragraphs 1, 9, 10, and 13 of the Petition.

2. It denies the allegation of paragraph 2 that Arthur Young is a corporation, but admits that Arthur Young is a partnership doing business within the State of New York with its principal place of business located at 277 Park Avenue, New York, New York, within the jurisdiction of this Court.

3. It is without sufficient information to admit or deny the allegations of paragraphs 3, 4, 5, and 12.

4. It admits that on April 17, 1978, an Internal Revenue summons, a copy of which is annexed as Exhibit B to the Petition, was issued directing Arthur Young to appear to testify and produce the documents described in the summons and that a copy of this summons was served on the respondent through Carl D. Liggio, as counsel for Arthur Young and Company, at the time and in the manner indicated on Exhibit B to the Petition, but except as admitted herein denies paragraph 6 of the Petition.

5. It denies the allegations of paragraph 7 of the Petition.

6. It admits that petitioner now purports to seek only production of the records and documents described in items 1 through 5, 7 through 10, and 12 through 17 of the sum-

mons, but except as admitted denies the remaining allegations of paragraph 8 and avers that the demands of items 12 and 16 are so broad as to include items 6 and 11.

7. It admits the allegation of paragraph 11 that respondent did not appear on the return date of the summons, but avers that it has attempted to reach a good faith resolution of this matter with petitioner who has refused to do so.

AFFIRMATIVE DEFENSES

First: The summons is invalid as it exceeds the statutory authority of the Internal Revenue Service.

Second: The summons is burdensome and harassing.

Third: The summons should not be enforced except to the extent it seeks relevant data at the location where such data is kept and the IRS tenders to Arthur Young the full costs of compliance of the subpoena.

Fourth: As a matter of policy the IRS should not be entitled to certain documents it seeks from Arthur Young.

Fifth: Certain documents sought by the IRS are immune from production.

Sixth: The IRS delay in seeking enforcement of the summons constitutes a waiver of its right to seek enforcement.

WHEREFORE, Arthur Young respectfully prays:

1. That this Court deny petitioner's request or in the alternative enter a protective order as more fully set out in respondent's papers, and

2. That this Court grant such other and further relief as it deems just and proper.

Dated: December 28, 1979
New York, New York

/s/ CARL D. LIGGIO

CARL D. LIGGIO
General Counsel
Arthur Young & Company
277 Park Avenue
New York, New York 10017
(212) 922-2465

UNITED STATES DISTRICT COURT
SOTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, INTERVENOR

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

AFFIDAVIT

CARL D. LIGGIO, being duly sworn, says:

1. I am General Counsel of Arthur Young & Company ("Arthur Young") and member of the Bar of this Court. This Affidavit is made in opposition to the Petition of the Internal Revenue Service ("the Service") to enforce a Summons Duces Tecum served on Arthur Young some 21 months ago.

2. The Government proceeded by Order to Show Cause on October 9, 1979 even though it had done nothing with respect to the summons for some 18 months. In support of the petition is an Affidavit of G. Robert Armstrong, Special Agent of the Internal Revenue Service, dated the 19th of July, 1979 (the "Armstrong Aff."), executed some three months prior to the date that the Government moved by Order to Show Cause.

3. The IRS seeks to enforce a summons for virtually every document in Arthur Young's files relating to the audits and tax return work done for Amerada Hess Corporation ("Amerada") for the periods 1972 through 1974. The documents called for by the summons are kept at two locations, New York City and Tulsa, Oklahoma. They comprise over 700 workpaper binders plus correspondence files. Based on

my prior experience with Arthur Young workpapers, I estimate that the summons seeks over 250,000 pages.

THE ISSUES

4. At the outset, it is important to note what this case is not about as much as what it is. Given the pejoratives used in the Armstrong Aff. to describe Amerada and certain of its purported activities and in arguments of government counsel on the motion for a stay or transfer, one would suspect that this case involves issues of fraud and that Arthur Young's refusal to produce the workpapers is only an attempt to conceal certain nefarious activities on the part of its client. This is neither the case, *see* Affidavit of Roger Oresman sworn to on December 28, 1979 (the "Oresman Aff."), nor the reason for Arthur Young's noncompliance which is based solely on policy reasons (*see* discussion, *infra*).

5. Procedurally, the case is in part before this Court because Amerada exercised its rights pursuant to Section 7609 of the Internal Revenue Code to object to the production of documents by Arthur Young, a third-party recordkeeper. But even if Amerada had not intervened and filed an objection under Section 7609, Arthur Young would still have objected to the summons and the parties would in all likelihood be before this Court.

6. The reason for this is simple. Arthur Young believes that the Service has overstepped its authority in serving this broad-based summons seeking all the documents in Arthur Young's files relating to Amerada and, particularly, in its attempt to obtain the tax accrual workpapers, a matter discussed in substantially more detail in paragraphs 17 to 31 of this Affidavit.

THE BACKGROUND

7. Arthur Young has been Amerada's independent auditor since November 1, 1971. It conducted audits of Amerada's financial statements for the calendar years 1972, 1973, and 1974 (the tax years at issue). In 1976 Amerada's Board voluntarily established a Special Committee to determine whether there had been an improper use of corporate funds. It also retained its counsel, Milbank, Tweed,

Hadley, & McCloy ("Milbank Tweed"), in this project and retained Arthur Young to assist Milbank Tweed. Arthur Young did assist in this investigation and prepared files—29 workpaper binders—which were used by Milbank Tweed in providing legal advice to the Special Committee.

8. An Arthur Young partner, Theodore Romak, also signed the Amerada tax returns for the years in question even though Arthur Young was not the tax return preparer and IRS Practice guidelines did not require it to sign the tax return. However, both as a condition of the engagement by Amerada and under the AICPA's Standards of Professional Responsibility for Tax Return preparers, Romak signed the returns in question.

9. On Monday, April 17, 1978, Kenneth J. Kalemba, a Special Agent for the Service, served a summons on me for all the documents in Arthur Young's files relating to Amerada. When Mr. Kalemba served the summons, I quickly reviewed it and advised him that the summons appeared overly broad and raised significant policy issues which mandated our Firm's non-compliance with it. There were several reasons why I believed this, all of which I advised Mr. Kalemba of at that time. These were:

1. It violated the IRS's own procedural manuals;
2. It was overbroad and could not be totally relevant to any proper inquiry;
3. It was burdensome and harrassing as it, among other things, requested documents to be produced other than at their locations;
4. It sought our tax accural papers and audit programs which is inconsistent with prior Federal case law.

10. I also advised Mr. Kalemba that nothwithstanding this, we were willing to cooperate with the Service in producing documents relevant to its investigation provided, of course, that the Service was reasonable in its request. I told Mr. Kalemba that if he identified specific, relevant subject matters, Arthur Young stood ready to assist and cooperate with the Service subject, of course, to the legal restrictions otherwise imposed upon Arthur Young by Federal law.

11. Following this conversation with Mr. Kalemba, I reiterated this in a telephone conversation on Thursday, April 20, 1978 and further confirmed it in a letter to him on April 25, 1978, a copy of which is attached as Exhibit A to this Affidavit. In that letter I stated:

> "As we further discussed when I met with you on April 17, I will be out of the area May 4, 1978, and thus unable to appear at the return date as established. You indicated that because of our position with respect to the production, there was no need to appear and that the date was selected only to start the statutory period running."

12. Nothing further was heard from the Service until I was served with the Order to Show Cause in October, 1979. Subsequently, I had several conversations with Ms. Trager, the Assistant U.S. Attorney representing the Service, in an attempt to reach a resolution of the issues or at least to narrow the issues in dispute. During one of these conversations, I advised Ms. Trager that Arthur Young was prepared to make a production of relevant materials and to enlist our client's permission in making that production notwithstanding its 7609 objection, if the Service was prepared to identify by subject matter those areas in which it was interested. In response to this Ms. Trager advised me that she would consult with the special agents to see if this could be done. She subsequently advised me on November 27, 1979 that the agents did not know what they wanted and that they, therefore, needed to look at everything.

13. Arthur Young's objections to the production of the materials called for by the summons are several. Most were stated orally to Mr. Kalemba as noted above, and in writing by my letter dated April 25, 1978. More fully, they are as follows:

A. *The breadth of the summons:* The Service should not be entitled to obtain from a third party every piece of paper in its files just by asking for it. It believes the request must be reasonably specific and that some basic showing of relevance must be made to justify such an extensive production.

B. *The tax accrual papers:* Except in the rarest possible instances, which are not present here, the Service should not be entitled to have access to an auditor's tax accrual workpapers.

C. *Privileged materials:* Certain of the materials are privileged. They were either prepared for or compiled in conjunction with work performed by attorneys. If the Service is entitled to have access to that material, it will seriously limit the ability of lawyers to obtain needed assistance from other professional disciplines when providing legal services to their clients.

D. *Audit Programs and Plans:* These constitute trade secrets and provide no relevant information to the correctness of the tax returns.

E. *The burden and cost of compliance:* The Service seeks approximately a quarter of a million documents to be produced in New Jersey from locations in New York and Tulsa, Oklahoma. It does not offer compensation for the substantial burden that is imposed on Arthur Young in complying with this summons.

The most significant objection, however, is to the Service's request for Arthur Young's tax accrual workpapers. In order to understand the significance of the tax accrual papers it is important to understand what they are and the reason for their preparation.

THE AUDIT FUNCTION

14. The function of an audit is to provide an independent look at the representations of management to the stockholders and others as to stewardship of the business. Management's representations are contained in the financial statements. The auditor performs his audit in accordance with Generally Accepted Auditing Standards ("GAAS"). He utilizes those procedures which he believes are necessary in order to comply with GAAS and to permit him, upon completion of the audit, to render an opinion on the financial statements taken as a whole. To do this the auditor must review the various components of the financial statements. The auditor must test and review underlying sup-

porting documentation, obtain representations from management, and make an independent evaluation as to the correctness of the presentation in the financial statements when they are considered as a whole. This examination is conducted pursuant to an Audit Plan and Audit Programs prepared by the auditor which are trade secrets of the auditor.

15. Notwithstanding the fact that financial statements are a compilation of numbers, they are not expressions of mathematical certainty. Each financial statement represents many judgments by management and correspondingly by the auditor who must review those financial statements. For example, the fact that receivables are shown on the financial statements in an amount of $5,000,000 does not mean that the receivables will in fact produce $5,000,000 of receipts. There could be subsequent returns and credits issued against those receivables, debtors might decide not to pay because the product was defective and claim an offset, or because of poor business the debtor may be unable to pay and may, in fact, go into bankruptcy.

16. Management must make an evaluation of all of these possibilities and establish a reserve against those receivables to account for these possibilities. The auditor must make judgments as to the adequacy of the reserves and the procedures employed by management in establishing those reserves. It is very unlikely that the management or auditor's judgment as to the reserve will ever be 100% accurate. One cannot judge with any degree of certainty how many customers may fall on hard times and be unable to pay, what product defects might exist, etc. However, there usually exist some general criteria and some general guidelines from past experience of a particular company. Based on this a reserve is established by management and reviewed by the auditors. In the final analysis, however, this process involves the exercise of judgment. Both the auditor and management must go through this process for many items in the financial statements.

17. Similarly, one of the items in the financial statements which requires this judgmental process are the tax liability accounts. These accounts represent taxes currently due or due in the future—deferred taxes. The audit of the tax liability accounts is to see if the amounts shown, which are in many cases estimates, are reasonable. The purpose of the tax accrual review is materially different from work performed in preparing tax returns.

18. Financial accounting under Generally Accepted Accounting Principles ("GAAP") is different from the tax accounting. For example, a business may elect to take accelerated depreciation on a piece of equipment it had purchased, which is permissible under the tax code. However, for financial reporting purposes the effect of the tax deferral on current income from accelerated depreciation must be disregarded. Accordingly, the tax actually paid by a company using accelerated depreciation will be substantially less in the current year and substantially greater in future years. This creates what is known as a timing difference for taxes. The company will pay less taxes currently but more taxes in subsequent periods. For the financial statements to more clearly reflect the current period cost, a charge must be established currently for the deferred taxes to represent that portion of the taxes which would be paid but for the use of accelerated depreciation. Correspondingly, when the larger amount of taxes are paid in future periods they will not affect the then current income because they will be debited against the deferred tax account. This is a timing difference. The auditor must be sure that Management has accounted for it in preparing the financial statements.

19. In addition all major companies are audited annually by the Service. Quite often the Service will take positions different from those taken by the taxpayer in good faith. This results in a tax dispute which leads to a Revenue Agent's Report ("RAR") and, in turn, could lead to litigation or compromise with the Corporate entity subsequently paying more taxes if the RAR prevails. Sometimes the

Service will prevail, sometimes it will not (and sometimes the taxpayer will counterclaim for a refund and prevail); but more often the matter will be compromised by the taxpayer and Service. In auditing the financial statements, the auditor must take into account the possibility of adjustments being determined on audit by the IRS. This possibility must then be estimated and quantified and looked at from the standpoint of the amount of the reported taxes on the financial statements.

20. Adjustments by the Service can result from any number of things:

- They can result from an error found in the accounting records;
- They can result from a change in the case law occuring after the tax return was filed;
- They can result because the Service interprets the law or regulations applicable to the transaction in a different manner from the taxpayer;
- They can result because there are honest differences of judgment with respect to the transactions in question.

21. A typical example of an RAR involving oil companies is what is known as the "Delineation Wells Issue." The Delineation Wells Issue* arose several years ago when oil companies began drilling offshore. Unlike domestic drilling where the drill site will be completed as a production well and the allocation of costs between intangible ("IDC") and tangible drilling and Geological and Geophysical ("G&G") costs are relatively clear, oil companies would usually not complete their offshore test well which is usually drilled from a moving platform, but would drill their completion wells elsewhere. (IDC is currently deductible, but tangible drilling costs on a producing well must be capitalized and written off over the expected production of the well and G&G is capitalized as part of the leasehold and cost depleted.) Accordingly, the oil companies would treat all ex-

* Delineation Wells are used to determine the location of the oil and gas reservoir.

ploratory well costs as IDC entitling them to immediate deductibility of those costs. The Service has uniformly disallowed these costs. In a test case* before the tax court, *In re Standard Oil Co. (Indiana)*, 68 T.C. 28 (1977) (CCH) Dec. ¶ 34,442 ("the *Amoco* case"), the oil companies prevailed and the Service did not appeal! Nothwithstanding this, the Service has continued to disallow Delineation Well expenses on audit and continues to claim increased taxes. Management must make a judgment as to how these transactions will affect their tax liability: e.g. whether the IRS will ultimately win in another case or whether to avoid the expense of litigation, the company may be willing to reach a compromise with the IRS notwithstanding the fact that the Tax Court has ruled squarely for the oil companies. It must then either accrue for that potential liability or make a judgment that no liability will occur. Next the auditor must review that accrual to see if he concurs with management's evaluation, and if not, whether their differences are material. The tax accrual workpapers will reflect this judgmental process.

22. The auditors in evaluating these types of transactions and their impact on the financial statements must make many judgments themselves. They must review the reasonableness of the position taken by the client and the reasonableness of the positions expected to be taken by the Service; and as to prior returns, where an RAR has been issued, the reasonableness of the Service's position on the RAR. They must view the likelihood of success of each of these positions. They must also take into account the client's disposition with respect to responding to RAR's. Is the client one that is likely to litigate to the bitter end or roll over at the slightest sign of pressure nothwithstanding the validity of the taxpayer's position, or is it likely to try to settle on a reasonable basis; and if so, what would it consider a reasonable basis and what additional taxes is the client prepared to pay if it is unsuccessful?

**Subsequently in a private ruling the Service has taken the novel position that Delineation Wells cost were neither IDC, tangible costs nor G&G, but were costs of a different category, amortizable over the life of the field.

23. Ideally if the auditor could have access to the Service's views on these positions once it had all the facts, life would be simpler. It would know where a compromise is likely to be struck, and thus more realistically estimate or determine what the taxpayer's likely tax will be and what should be contained in the tax account.

24. Obviously, however, the Service does not want to share such information with the auditors any more than the taxpayer wants to share its views on those subjects with the Service. The Service believes that to do so would seriously weaken its ability to resolve the RAR. Correspondingly the client does not want that similar information to be made available to the IRS for the very same fears that its ability to strike a reasonable settlement on good faith judgments that it has made will be seriously impaired. It would create an unequal bargaining power in an area which is legitimately judgmental.

25. Another area which the auditor must consider is the possibility for challenges to the tax treatment of transactions by some new or novel theory. In doing so the auditor must play devil's advocate. He must look at the totality of the transactions to see if there are some things there that on any theory might be challenged—not that they ever would be challenged or even if challenged, successfully challenged. The result of this is that the auditor generates a series of positions from the highly likely to the most unlikely with respect to tax positions the Service could take. If the Service were to have this analysis, it would provide a basis for challenge to the taxpayer regardless of the merits of the challenge. The taxpayer, confronted with all of these challenges would, because of the risk of litigation, be forced to compromise otherwise valid positions.

26. For the auditor to make those evaluations he must review a multitude of facts in the company's records. He must talk to company personnel and he must be current in the tax laws, their ramifications, and significance. The tax accrual papers reflect the opinions and judgments of the auditors after all this has been done. There is no factual data relating to Amerada transactions in the tax accrual papers which is not otherwise available in the taxpayer's records

or in publicly available documents. (*See, infra* ¶ 31 and Exhibit B attached hereto.)

27. Thus it can be readily seen that permitting the Service access to the tax accrual workpapers would be seriously detrimental to the taxpayer and the auditor and more importantly, to the auditor's relationship with his client. The fundamental function of the auditor, the testing and checking of the representations of management would be seriously impaired. Clients would be reluctant to provide necessary information in the area of the tax accruals for fear that the IRS would routinely obtain this information and then indiscriminately challenge every tax position taken by it. The devastating impact of this to the auditing profession and to the primary objective of that audit, the integrity of the financial statements, is obvious.

28. It is for this reason that Arthur Young, without regard to Amerada's wishes in this connection, objects to and challenges the Service's ability to obtain the auditor's tax accrual papers.

29. But even aside from these important reasons, the tax accrual papers have no relevance to the IRS audit. As noted above, there is no factual information as to Amerada transactions contained in the papers which is not otherwise available. The tax accrual papers are prepared for an entirely different purpose than the tax return and tax return papers. They are prepared so that the auditor may determine within accounting/reporting materiality guidelines that the provision for taxes is neither understated *nor*, for that matter, overstated in the financial statements.

30. The Armstrong Aff. attempts in a very limited capacity to justify some relevance for the tax accrual papers. On Page 4, item 13, Armstrong states that it is a file

> "containing a memorandum letter or other document which recommends to the taxpayer that the possible contingent liability for taxes be set up. For example, if the taxpayer had paid bribes overseas and this was discovered by the Respondent, then the Respondent would have the taxpayer set up a contingent liability for taxes. The contingent liability is created in case the Internal Revenue Service disallows the deduction for bribes paid overseas."

31. First, the Armstrong Aff. is factually inaccurate. As auditors, Arthur Young has no power to require the taxpayer to set up any contingent liability for taxes nor does it do so. It views the totality of the tax account to see whether it is reasonable and within materiality guidelines, and provides an adequate reserve for any future taxes the taxpayer may be required to pay. Second, we have carefully reviewed the tax accrual files for the period covered by this summons. There is nothing in these files dealing with disallowances for deductions for bribes paid overseas or any of the matters covered in the Special Committee's Report to the Board of Directors which is more specifically referred to in paragraph 10 of the Armstrong Aff. (pp. 2-3). Attached hereto is Exhibit B, an Affidavit of Bruce Greenwald, a partner currently responsible for the Amerada tax work at Arthur Young who at my direction reviewed the tax accrual files subject to the summons. Mr. Greenwald's Affidavit makes it clear no such information is contained in the tax accrual workpapers.

THE DEMAND FOR ALL ARTHUR YOUNG'S WORKPAPERS

32. The summons served on Arthur Young seeks 17 categories of document types. This effectively calls for every document in Arthur Young's files relating to Amerada without regard to its relevance to Amerada's tax return. Although the Service "appears" to have abandoned its requests for the document types in categories 6 and 11, the breadth of paragraphs 12 and/or 16 negate that purported abandonment. (In addition paragraph 8 for which enforcement is still sought may include paragraph 11.) In fact paragraphs 12 and 16 encompass all other paragraphs of the summons except paragraphs 14 and 17.

33. Arthur Young does not take the position that the Service is not be entitled to have access to some or, even many, of its workpapers, provided, of course, the Service acted within its legal authority. Rather, Arthur Young's position is that the Service may not effectively ask for every piece of paper in Arthur Young's files without regard to

relevancy* by describing generically the document types which it wishes to see. An example of this best illustrates Arthur Young'sposition.

34. Assume that the Service is investigating a specific transaction relating to whether the installment method of reporting a gain is appropriate. Under such circumstances there may be correspondence, memoranda and other workpapers recording and reflecting the transaction. A proper summons request would be for documents relating to the identified sales transactions. It would be improper to make a demand for all correspondence, memoranda and workpapers relating to XYZ Corp. The latter is a generic document request which is improper and should not be permitted. Accordingly, the Service's request for Arthur Young's "administrative file", "workpaper review file", "engagement planning file", "significant events file", etc. is the type of generic document request that Arthur Young submits is improper. Such a generic "document request" cannot be tested for relevancy either by a Court or a party trying in good faith to comply with a summons.

35. Another similarly over broad request is paragraph 16 which requests "Any other information pertinent to the audit of taxpayer covering the years 1972, 1973 and 1974." Not only is this request overly broad, but it is also unduly vague.

36. As noted above, Arthur Young does not argue that the Service cannot have access to its files. For example, of the 17 paragraphs of the summons one is, in Arthur Young's view, a proper subject matter request and documents would be produceable subject, of course, to the outcome of the other issues raised in this proceeding. This is item 17 which states:

> "All workpapers, reports, records, correspondence, reconciliations and information relative to the United States Corporate Income Tax Returns (Forms 1120) of Amerada Hess Corporation that were prepared by Arthur Young & Co. or under the supervision of Arthur

---

*There are many workpapers which have absolutely nothing to do with Amerada's tax liability nor could they have anything to do with it even under the loosest standard of relevancy.

Young & Co. for the calendar year 1972, 1973, and 1974".

This request is obviously relevant to a specific subject matter which on its face is within the ambit of the Service's investigation—the preparation of the tax returns.

37. It is for the foregoing reasons that Arthur Young opposes this Petition and respectfully requests that this Court deny the Petition in its entirety or, in the alternative, to condition compliance on the Service identifying with particularity the subject matters of its inquiry and limiting production to documents pertinent to those subject matters; but in any event denying access to the tax accrual papers. Such production should be further conditioned on the Service reviewing the documents where they are kept by Arthur Young and tendering to Arthur Young the costs of compliance with the summons.

/S/ CARL D. LIGGIO
CARL D. LIGGIO

Sworn to before me this 28th day of December, 1979.

/S/ ANTHONY J. ZAGARINO
ANTHONY J. ZAGARINO
Notary Public

ARTHUR YOUNG & COMPANY

277 Park Avenue
New York, N.Y. 10017

April 25, 1978

Mr. Kenneth J. Kalemba
Special Agent
Internal Revenue Service
P.O. Box 1137
Asbury Park, NJ 07712

Re: *Amerada Hess Corporation*

Dear Mr. Kalemba:

This will confirm the oral statements I made to you on Monday, April 17, 1978 when you served me with a summons for documents in Arthur Young & Company's files relating to services we have performed for Amerada Hess. At the time you served me with the summons, I advised you that on its face it appeared to be overly broad and that it raised significant policy issues which mandated our non-compliance.

Now that I have had time to study the summons, I believe it appropriate to elaborate on those comments.

1. The summons calls for almost every piece of paper relating to Amerada Hess in the Arthur Young files. We believe this is inconsistent with the IRS' own procedural manuals, and in any event, is improper.

2. To the extent it seeks all papers indiscriminately, the summons is necessarily overly broad and without the statutory authority of the Service. It seeks papers that could not be relevant to any proper inquiry.

3. To the extent that it calls for virtually all of our workpapers, particularly on an audit the size of Amerada Hess, the summons is burdensome and harrassing. This is exacerbated by the fact that production of these materials is requested at the Service's offices in New Jersey.

4. To the extent that it attempts to identify specific types of papers such as "tax pool analysis," and "audit programs", we believe that the summons is inconsistent with

positions taken by Federal Courts and in direct contravention of the Service's own positions. *See e.g., U.S.* v. *Coopers & Lybrand*, 550 F.2d 615 (10th Cir. 1977).

As I indicated to you when we met and in a subsequent telephone conversation on Thursday, April 20, 1978, Arthur Young & Company always stands ready and willing to cooperate with the Service in producing relevant documents to its investigations, provided, of course, that the Service is reasonable in its request. To the extent that you are prepared to identify specific relevant matters to your investigation, Arthur Young stands ready and willing to cooperate and assist you subject, of course, to the strictures of § 7609 of the I.R.C. To the extent that you continue to press for compliance with a burdensome, harrassing, and improper summons, Arthur Young will resist all of your demands to the fullest extent possible within the framework of the legal system.

As we further discussed when I met with you on April 17, I will be out of the area May 4, 1978, and thus unable to appear at the return date as established. You indicated that because of our position with respect to the production, there was no need to appear and that the date was selected only to start the statutory period running.

Again, I wish to reiterate that we stand ready and willing to cooperate with you in a reasonable manner. Please feel free to call me to discuss this.

Very Truly yours,

CARL D. LIGGIO
General Counsel

cc: Amerada Hess Corp.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT.

and

AMERADA HESS CORPORATION, INTERVENOR.

AFFIDAVIT

BRUCE M. GREENWALD, being sworn, says:

1. I am a partner with Arthur Young & Company ("Arthur Young") and a partner with responsibility for the tax work Arthur Young performs for Amerada Hess Corporation ("Amerada").

2. At the request of Carl D. Liggio, I reviewed the tax accrual workpapers prepared by Arthur Young in connection with its audits of Amerada for the years 1972, 1973 and 1974.

3. There is no information whatever in the tax accrual workpapers relative to any alleged bribes or other matters covered by the Special Committee's Report.

4. To the extent there is any actual data relating to Amerada's transactions in the tax accrual files, such data was derived from and can be found in Amerada's files or in publicly available documents.

/S/ BRUCE M. GREENWALD
BRUCE M. GREENWALD

Sworn to before me this 26th day of December, 1979.

/S/ ANTHONY J. ZAGARINO
ANTHONY J. ZAGARINO
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, INTERVENOR.

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROGER B. ORESMAN, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York. I am a member of the firm of Milbank, Tweed, Hadley & McCloy, attorneys for Amerada Hess Corporation ("Amerada"), the intervenor in this proceeding.

2. I submit this affidavit in opposition to the petition of the Government for an order directing Arthur Young & Company ("Arthur Young"), the respondent, to comply with an Internal Revenue Service ("IRS") summons issued April 17, 1978 and calling for a mammoth production of certain records of Arthur Young. A copy of the summons is attached as Exhibit A.

3. Amerada's answer to the petition for enforcement of the summons, a copy of which is attached as Exhibit B, sets forth six affirmative defenses. They are:

a. that the summons was issued solely for a criminal purpose;

b. the summons was issued to harass Amerada;

c. the summons is overly broad and not relevant to any legitimate tax inquiry;

d. some of the documents are protected from disclosure by the attorney's work product doctrine;

e. the IRS is prohibited by law and public policy from discovering Arthur Young's tax accrual workpapers;

f. the delay between issuance and enforcement of the summons constitutes a waiver.

4. Amerada is a Delaware corporation engaged in the business of an integrated oil company.

5. Respondent Arthur Young is an accounting firm and was Amerada's auditor in 1972, 1973 and 1974. The documents sought by the instant summons (the "Arthur Young Summons") all relate to Amerada.

BACKGROUND

6. On February 22, 1976, during the course of its normal yearly audit by the IRS, Amerada received from the IRS Information Document Request No. 160, the subject of which was "Slush Funds Years 1972-1973". Attached to the Information Document Request was a questionnaire containing a number of questions directed to six Amerada officers and directors and requesting an oral interview with the named persons. The request was signed by William E. Huntley, the IRS Case Manager in charge of the ongoing audit of Amerada's 1972 and 1973 federal income tax returns.

7. Thereafter, on April 7, 1976, the Board of Directors of Amerada adopted a resolution establishing a Special Committee to determine whether, from January 1, 1971 through 1976, any illegal political contribution or any questionable payments to any governmental official had been made with corporate funds. Pursuant to this resolution, an extensive investigation was conducted for the Special Committee by the law firm of Milbank, Tweed, Hadley & McCloy. Arthur Young was retained to assist Milbank, Tweed with the investigation.

8. The investigation uncovered payments aggregating $7,830 in 1972, 1973 and 1974—the three years under IRS

investigation—which had apparently been made to members of a local police department. In addition, there were minor gratuities such as sheep and pen and pencil sets to foreign governmental officials—all apparently legal in the countries where they were given—and two illegal political contributions totalling $500 clearly made in error.

9. The gratuities and political contributions were accurately recorded on the Corporation's books. In view of Amerada's revenues of seven billion dollars and $57.7 million of federal income taxes paid in this three-year period, these payments can only be characterized as legally insignificant.

10. In late June, 1976, six officers and directors of Amerada and the partner of Arthur Young in charge of Amerada's audit received a letter from the IRS stating that the Corporation's income tax returns were being audited. An IRS Questionnaire commonly known as the "Eleven Questions" was enclosed with the letter. These superseded the earlier set of questions directed to the same persons.

11. Amerada officers and directors responded to the "Eleven Questions" by affidavit. The affidavits disclosed the payments uncovered by the investigation and noted that they had been deducted on Amerada's corporate income tax returns. By letter subscribed under penalties of perjury, the partner of Arthur Young in charge of Amerada's audit indicated that he had no reason to believe that the responding affidavits of the Amerada officers and directors were inaccurate.

12. The Corporation took improper deductions of less than $3,000 per year in the three years under investigation when its "other deductions" on its Federal tax returns totalled $340,000,000 and taxes paid totalled $57,000,000. Subsequently, the Corporation advised the IRS that it would concede the disallowance of the improper deductions.

13. Thereafter, Amerada received 18 IRS information document requests. All but two of these requests (asking for documentation of the payments to police) were answered fully and completely. The unanswered document requests, which would merely corroborate what the Corporation had previously disclosed to the IRS, were believed by

Amerada to be irrelevant to an examination of its tax returns. In the course of responding to other requests, Amerada cooperated consistently with the IRS and provided substantial documentation.

14. In August, 1977, after Amerada declined to provide material covered by the two document requests, the Corporation was informed that its case had been referred to the Intelligence Division of the IRS in Asbury Park, New Jersey, which had decided to undertake a criminal investigation of Amerada.

15. In September 3, 1977, other representatives of Amerada and I met with the Intelligence Division's Special Agent in charge of the case, Kenneth Kalemba, and Mr. Kalemba's supervisor, Mr. John J. Kuper, Group Manager. We were informed that Special Agent Kalemba's purpose was to conduct a criminal investigation of Amerada. We were also informed that the only basis for the criminal investigation were the payments described in paragraph 8. Moreover, we were told at that meeting that the IRS had no evidence that the disclosures of Amerada had been incomplete or inaccurate.

16. During the course of the meeting, the IRS expressed a desire to continue with the civil audit and inquired whether the Corporation had any objection to this procedure. The Amerada representatives stated that they would consider this question, but expressed concern as to how continuing document requests could be separated to distinguish between the discovery efforts of the criminal investigation and the civil audit. The Amerada attorneys at that meeting wanted to be able to know which document requests were related to the criminal investigation.

17. In response to the Corporation's expressed concern, Special Agent Kalemba agreed that if Amerada consented to the continuation of the civil audit, all document requests for purposes of the civil audit would be reviewed by him and initialed and sent by Revenue Agent Caputo (the agent who works on the civil audit) to the person at Amerada who normally received such requests, and that all requests for documents or information for purposes of the criminal in-

vestigation would come from Kalemba and be directed to an Amerada attorney.

18. Upon information and belief, within a week thereafter and in reliance upon this agreement, Special Agent Kalemba was informed by Robert G. Morvillo, Esq., an attorney for Amerada, that Amerada would consent to the continuation of the civil audit.

19. At the meeting on September 3, Special Agent Kalemba requested documents from Amerada for his criminal investigation. The representatives of Amerada told Special Agent Kalemba that they would like to consider his document requests and would give him their response shortly.

20. Upon information and belief, after discussing the matter with representatives of Amerada, Mr. Morvillo, who had also attended the September 3 meeting, called Special Agent Kalemba and told him that Amerada was concerned and puzzled by the institution of a criminal investigation where none seemed warranted by the facts, especially in view of the *de minimis* nature of the payments. Mr. Morvillo asked Special Agent Kalemba for his suggestion of a person in a position of responsibility at the IRS with whom we might raise the question whether a criminal investigation was warranted. Mr. Kalemba declined to give that information.

21. Mr. Morvillo and I then addressed a letter, a copy of which is attached as Exhibit C, to the Director, Criminal Tax Division of the IRS. After substantial delay at the IRS, the matter was eventually referred to the District Director in Newark and, with Mr. Kalemba's assistance, we sought a meeting with him.

22. On January 12, 1978—after a date had been set for our meeting with the district director but before the meeting was held—Amerada was served with two summonses ("the January 12 summonses") for the documents requested by Special Agent Kalemba at the September 3 meeting. At no time during this period of time, or even subsequently when we met with the District Director, were we advised that the information requested by Mr. Kalemba on September 3 was sought for civil purposes or to determine the cor-

rect tax liability of Amerada. According to Mr. Kalemba's explicit representation, the information was requested solely for the purpose of furthering the criminal investigation.

23. Amerada notified the IRS of its refusal to comply with the January 12, 1978 summonses on the ground, among others, they had been issued solely for a criminal purpose and thus were invalid.

24. Despite the consent of Amerada to its continuation, the civil audit was suspended during the period from the September 3 meeting through January 12, 1978 when the summonses were issued.

25. Revenue Agent Caputo testified that the civil audit remained in suspension until "[p]robably April or May." (Tr., *United States* v. *Amerada Hess Corp.*, D. N.J. Civ. No. 78-753 ("*Kalemba-Jersey I*") at 123. On April 17, 1978—while the civil audit was still suspended—Special Agent Kalemba served the instant summons on Arthur Young ("Arthur Young summons"). Pursuant to 26 U.S.C. § 7609(a), Special Agent Kalemba notified Amerada of this summons. On the following day, Special Agent Kalemba served a similar summons on N. Tannenbaum & Co., another accounting firm employed by Amerada, and similarly notified Amerada.

26. Amerada believed these summonses to be invalid since they had been issued solely for a criminal purpose—there being no active civil audit at the time. Amerada, pursuant to its statutory right, directed Arthur Young and N. Tannenbaum & Co. not to comply with these summonses. A copy of Amerada's letter, dated April 21, 1978, instructing Arthur Young not to comply with the summonses is attached as Exhibit D. A copy of this letter was also sent to the IRS.

27. On April 26, 1978, the IRS filed a petition to enforce the two January 12, 1978 summonses in the United States District Court for the District of New Jersey.

28. Shortly after the service of the Arthur Young summons and the initiation of enforcement proceedings for the January 12, 1978 summonses, the civil audit was activated. In accordance with the agreement reached on September 3, Special Agent Kalemba (and his successor to the investiga-

tion, Special Agent Armstrong) initialed all civil document requests, and Amerada complied with all such requests.

29. On May 25, 1978, the IRS served two additional summonses on Amerada with which Amerada declined to comply. On the same day the IRS served a summons on Irving Trust Co. with which Amerada instructed Irving Trust not to comply. These refusals were premised in part on Amerada's belief that the summonses were issued solely for a criminal purpose.

30. On July 18 and 20, 1978, there was an evidentiary hearing in *Kalemba-Jersey I* before the late Judge George H. Barlow of the United States District Court for the District of New Jersey. Amerada raised, among other arguments, the solely criminal purpose defense. By opinion and order dated December 8 and January 22, 1979, Judge Barlow rejected the solely criminal purpose defense and enforced the January 12, 1978 summonses. In essence, Judge Barlow ruled, as a matter of law, that as long as the civil audit had not been completed, the summonses would be deemed to have been issued for a legitimate civil purpose. Because of the legal standard which he applied, Judge Barlow made no factual finding with respect to the September 3 agreement by the IRS to distinguish between, and separately label, civil and criminal document requests. As noted in the accompanying memorandum of law (at 10n.), Amerada contends that Judge Barlow erred in reaching this conclusion.

31. Judge Barlow stayed his order pending appeal. An appeal in that case was argued before the United States Court of Appeals for the Third Circuit on October 19, 1979.

32. Prior to filing the petition to enforce the Arthur Young summons, the IRS initiated three other enforcement proceedings in connection with the Amerada investigation. In two of these cases (involving the N. Tannenbaum & Co. and Irving Trust Co. summonses) Amerada consented to production.

33. In the third case brought with respect to the Amerada summonses issued on May 25, 1978 (see ¶ 29, *supra*), Amerada opposed enforcement based upon the solely criminal purpose defense as well as other defenses. *United*

States of America v. *Amerada Hess Corp.*, D. N.J. Civ. No. 79-1805 ("*Armstrong-Jersey II*"). In that case, United States District Judge Clarkson S. Fisher, without a hearing, enforced the two summonses, but recognizing the identity of issues between that litigation and the appeal pending in the Third Circuit, stayed the execution of his order pending decision by the Third Circuit, and gave Amerada permission to relitigate after the Third Circuit's decision.

AFFIRMATIVE DEFENSES

Solely Criminal Purpose

34. The preceding history of the IRS investigation of Amerada indicates conclusively that the sole purpose underlying the issuance of the Arthur Young summons was to gather evidence as part of a criminal investigation of Amerada. At the September 3, 1977 meeting between IRS and Amerada, Special Agent Kalemba in the presence of his superior, Special Agent Kuper, agreed to define the IRS requests as either civil or criminal. There can be no dispute about this fact since Special Agent Kalemba admitted it in the hearing before Judge Barlow. A copy of page 44 of the hearing transcript containing Special Agent Kalemba's testimony is attached as Exhibit E.

35. Further testimony at the hearing disclosed that Group Manager, John Kuper, Special Agent Kalemba's immediate supervisor, approved the issuance of the January 12, 1978 summonses against Amerada with full knowledge of the agreement to distinguish between civil and criminal document requests; that Kalemba's request for authority to issue those summonses was forwarded to Kalemba's Branch Chief, Mr. Rubin, and then to the chief of the Intelligence Division, Mr. McElroy, who approved the request and transmitted it to regional counsel; and that in connection with the summonses, there were discussions between Special Agent Kalemba and Alice Holecheck, a representative of regional counsel. I have no reason to believe that the IRS institutional procedure for obtaining authority to issue the Arthur Young summons was materially different from that followed with regard to the January 12, 1978 summonses addressed to Amerada.

36. In view of this testimony and the fact that the IRS has complied with this agreement to distinguish between civil requests and criminal summonses (see paragraph 17, *supra*), the IRS should not now be heard to argue that the Arthur Young summons was issued for any civil purpose.

37. As noted above, on Revenue Agent Caputo's own testimony (see ¶ 25, *supra*), at the time of the issuance of the Arthur Young summons by Special Agent Kalemba, the civil audit was suspended.

38. Upon information and belief, Amerada understands that the civil audit for 1972 and 1973 has been virtually completed.

Arthur Young's tax accrual workpapers are not subject to discovery by the IRS

39. Paragraph 13 of the summons calls for information in the tax accrual file. The IRS knows that this information is extremely sensitive to all corporations since it discloses the corporation's views with respect to tax issues presently at issue between it and the Service. For the IRS to take possession of this type of information would be similar to an attorney's attempt to learn his opponent's trial strategy and methods of preparation for the conduct of the case.

40. Upon information and belief, never in Amerada's history has the IRS sought this information. Although the civil audit had been initiated some two years before the issuance of the Arthur Young summons, this type of information was never sought either formally or informally.

41. Upon information and belief, the IRS has rarely asked for tax accrual files from any corporation. Yet, without warning of any kind, Special Agent Kalemba summoned them in an investigation having nothing to do with tax accrual. The Kalemba investigation dealt exclusively with Amerada's disclosures in the questionable payment area. Despite the suggestion in the summons that this file might contain reserves for bribes, I am informed by Mr. Bruce M. Greenwald, the Arthur Young partner with responsibility for Arthur Young's tax work for Amerada, that the tax accrual file contains no information even remotely relevant to

questionable payments. Affidavit of Bruce M. Greenwald, sworn to on December 26, 1979, ¶ 3.

The Arthur Young summons was issued to harass the taxpayer and is unduly broad and burdensome.

42. I have been informed by Carl D. Liggio, Esq., general counsel for Arthur Young, that the instant summons calls for the production of virtually every piece of paper in the Arthur Young files relating to Amerada. Mr. Liggio estimates that there are in excess of 250,000 pages of documents called for by the summons. Affidavit of Carl D. Liggio, Esq. ("Liggio Aff."), sworn to December 28, 1979, ¶ 3. Arthur Young's tax accrual workpapers are not subject to discovery by the IRS.

43. This unprecedented summons issued only after the Amerada refused to comply with Special Agent Kalemba's first two criminal summonses.

44. Thus, it can only be concluded that Special Agent Kalemba apparently issued this summons to punish and harass Amerada because the company would not cooperate with his investigation.

45. At the very least, it is clear that the great majority of the documents sought, including the tax accrual file, are irrelevant to any continuing civil or ciminal investigation.

Attorney's Work Product

46. As noted above, the instant investigation is predicated upon Amerada disclosures after its internal questionable payments review.

47. By March of 1976, there had been public announcements of six settlements of Securities Exchange Commision ("SEC") enforcement actions against corporations charging them with violations of the federal securities laws by reason of their failure to accurately reflect on their books and records, certain illegal or "sensitive" payments and to disclose those payments in reports filed with the SEC. Three oil companies were included in that group of six. In addition, the SEC had reported the filing of seven other cases relating to the same types of allegedly illegal activities. At

least one private shareholders' action had been commenced as a result of the foregoing SEC actions.

48. Although I had no reason to believe that Amerada had engaged in similar activities, it was a corporation with international activities in areas which had different standards for doing business than those of the United States. I, therefore, believed that an investigation and litigation might be commenced by the SEC against Amerada to determine whether it had engaged in any similar activities involving improper payments. I therefore advised the Corporation that it should authorize a Special Committee to review the Corporation's activities in this area.

49. On April 7, 1976, the Board of Directors of Amerada adopted a resolution establishing a Special Committee to determine whether any illegal political contributions or questionable payments to government officials had been made with corporate funds. The Special Committee was directed to proceed in its investigation with the professional assistance of Milbank, Tweed, Hadley & McCloy in order that the Board of Directors could be best advised as to the legal implications of the facts unearthed by the investigation.

50. Having in mind the applicable statutes and the SEC's disclosure policy with regard to questionable payments and its increasingly active enforcement policy as set forth in the SEC's report dated May 12, 1976, which was submitted to the Senate Banking Housing and Urban Affairs Committee, Milbank, Tweed, Hadley & McCloy conducted the investigation on behalf of the Special Committee.

51. In order to conduct the investigation, Amerada retained Arthur Young to assist Milbank, Tweed. The Arthur Young Special Committee workpapers file, which is the target of paragraph 14 of the Arthur Young summons, was prepared at the request of Milbank, Tweed in connection with the investigation. (See Liggio Aff., ¶ 7).

52. Upon completion of the investigation, Milbank, Tweed, Hadley & McCloy submitted to the Special Committee "Counsel's Memorandum to Amerada Hess' Special Committee" which contained the results of Milbank's factu-

al and legal research, its analysis and its advice to the Special Committee.

53. In the *New Jersey-Kalemba I* summons enforcement proceeding, Judge Barlow found that Amerada's Special Committee was formed, and its investigation was conducted, in anticipation of litigation. The IRS had never disputed or appealed from this finding, and both parties are bound by virtue of the doctrine of collateral estoppel. Clearly, the Arthur Young Special Committee workpapers file is covered by the attorney work product doctrine.

54. Amerada furnished the IRS with the Special Committee's Report to the Amerada Board of Directors and the analyses of the special disbursing account which reflects the product of Arthur Young's and Milbank, Tweed's investigation. These documents contain the factual data relating to alleged questionable payments in which the IRS is apparently interested. The IRS has also received many documents from Irving Trust Co. and N. Tannenbaum & Co., including the checks and records of the special disbursing account through which Amerada makes payments to consultants. (see ¶ 25 supra).

55. Upon information and belief, Amerada's books of account and financial and transactional records have been made available to the IRS in connection with its regular examination for the years 1972 and 1973, and will be made available to complete the regular examination for 1974. Accordingly, the IRS has access to all corporate records on which Arthur Young based its opinions and analysis of the Special Committee workpapers, as well as its opinions, judgments and thoughts regarding the adequacy of the tax liability account contained in the tax accrual workpapers.

56. The IRS should not be permitted to take advantage of attorney's work product rather than conduct its own investigation.

* * *

57. Based upon the foregoing and the authorities discussed in the accompanying memorandum of law of Amerada, as well as the affidavit of Carl D. Liggio, Esq. and the Arthur Young memorandum of law, to which this Court is respectfully referred, it is requested that the IRS petition

for enforcement should be dismissed or, in the alternative, that an evidentiary hearing should be held.

/s/ ROGER B. ORESMAN
ROGER B. ORESMAN

Sworn to before me this 28th day of December, 1979

/s/ JOHN C. MALONEY, JR.
JOHN C. MALONEY, JR.
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M 18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT INTERVENOR.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

KATHERINE J. TRAGER, being duly sworn, deposes and says:

1. I am a Special Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and have been assigned to represent the interests of the United States in this action. I submit this affidavit in response to the opposing affidavits of intervenor Amerada Hess Corporation ("Hess") and respondent Arthur Young & Co. ("Arthur Young").

2. As set forth in the affidavits of Special Agents Robert G. Armstrong and Kenneth J. Kalemba submitted in support of the Petition, the summons was issued to Arthur Young in connection with a joint investigation of Hess by the IRS's Examination and Criminal Investigation Divisions. This summmons was one of seven issued so far in the course of the investigation. Four summons were issued to Hess, and one each to Irving Trust Company, Hess's bank, and to N. Tannenbaum & Company, and Arthur Young, Hess's accountants.

3. Hess refused to produce any of the information or documents requested in its summonses and instructed Irving Trust, Arthur Young and Tannenbaum not to comply with the summonses served upon them.

4. As a result, the United States has instituted five proceedings to enforce the summonses. The first proceeding United States of America v. Amerada He . 79-1137 (DNJ) ("*Hess I*") sought to enforce two of the Hess summonses which requested specific information and documents about questionable domestic and foreign payments by Hess. Judge Barlow of the District Court of New Jersey ordered enforcement of the summonses on January 22, 1979. (A copy of Judge Barlow's opinion in *Hess I* is attached as Exhibit A). Hess has appealed this order to the Third Circuit.

5. On December 6, 1978, the United States commenced a proceeding in this Court to enforce the summons served upon Irving Trust. (A copy of the petition is attached as Exhibit B.) After counsel for Hess had the opportunity to inspect Irving Trust's documents, Hess withdrew its direction to Irving Trust not to comply with the summons. (Exhibit C).

6. On June 8, 1979, the United States commenced a second enforcement proceeding in the Southern District, this time to enforce the summons issued to Tannenbaum. Again, after Hess examined the Tannenbaum documents, it withdrew its direction to Tannenbaum not to comply with the summons. Thereafter, Hess made an application to intervene and for modification of the order solely to provide that the case be marked closed. (Exhibit D). Judge Sand denied this motion by order dated August 28, 1979. (Exhibit E).

7. Subsequently, the United States commenced a second proceeding against Hess in *United States* v. *Amerada Hess*, 79-1805. The District Court of New Jersey ordered enforcement of this summons on November 16, 1979. (Exhibit F).

8. In connection with this proceeding, I had discussions with Carl Liggio, General Counsel for Arthur Young. Mr. Liggio requested that I request the IRS agents to further specify the documents sought. After consultation with Special Agent Armstrong, I informed Mr. Liggio that at this

stage of the investigation the agents did not have sufficient information to further specify the documents summoned.

/s/ KATHERINE J. TRAGER
KATHERINE J. TRAGER

Sworn to before me this 7th day of January, 1980.

/s/ NANCY E. FRIEDMAN
NANCY E. FRIEDMAN
Notary Public, State of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

SUPPLEMENTAL AFFIDAVIT

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

G. ROBERT ARMSTRONG, being duly sworn deposes and says:

1. I submit this supplemental affidavit in response to the affidavits submitted on behalf of respondent Arthur Young & Company and taxpayer-intervenor Amerada Hess Corporation ("Hess").

2. In my capacity as a Special Agent, I together with Revenue Agent Anthony Caputo of the Examination Division, am continuing an investigation of Hess, one purpose of which is to ascertain the correctness of Hess's tax returns for the years 1972, 1973 and 1974. As a result of Hess's resistance to all IRS summonses, the investigation has been stymied. The investigation is continuing, and I have not yet made, and am not yet in a position to make, any recommendation one way or the other to my supervisor pending further investigation.

/s/ G. ROBERT ARMSTRONG
G. ROBERT ARMSTRONG

Sworn to before me this 4th day of January 1980.

LYNWOOD HAYES
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

KENNETH J. KALEMBA, being duly sworn, deposes and says:

1. I am employed as a Special Agent in the Office of the District Director of Internal Revenue, Newark District, with a post of duty at Asbury Park, New Jersey.

2. In my capacity as a Special Agent, I together with Revenue Agent Anthony Caputo of the Examination Division, was conducting an investigation of Amerada Hess Corporation ("Hess") a purpose of which was to ascertain the correctness of Hess's tax returns for the years 1972, 1973 and 1974. I left the investigation in May 1978.

3. The Hess investigation is a joint investigation conducted by the Examination and Criminal Investigation Divisions. At the time I left the investigation, Special Agent Armstrong assumed my responsibilities and I am informed that the investigation is continuing. As of the time I left the investigation, no recommendation for criminal prosecution has been made by the Internal Revenue Service to the Department of Justice with respect to the matters under investigation. Indeed, while I was assigned to the matter, I was never in a position to make any recommendation one

way or the other to my supervisor pending further investigation.

4. While I was in charge of the investigation, and with the approval of my Group Manager, I issued an Internal Revenue Service summons directing the respondent to appear before me to testify and produce for examination the books, records and other documents described in the summons, a copy of which is annexed to the Petition as Exhibit B.

5. Thereafter, the summons was personally served on respondent at the time and in the manner indicated by Exhibit B at page 2.

6. In accordance with Section 7609(a) of the Internal Revenue Code of 1954, as amended, notice of service of the summons and copies of the summons was sent by certified or registered mail to the taxpayer in the manner indicated by Exhibit B at page 2.

7. Subsequently, the taxpayer instructed respondent not to comply with the summons. A copy of those instructions is annexed to the Petition as Exhibit C.

8. The respondent objected to the summons and said it would not comply with the summons. I am informed that the refusal to comply with the summons continues to the date of this affidavit.

9. To my knowledge, the books, records or other data sought by the summons are not and have never been in the possession of the Internal Revenue Service.

10. It is necessary to examine the books, records and other papers demanded by the summons and to take the testimony of respondent in order to ascertain the correctness of the tax returns filed by the taxpayer for the years under investigation.

/S/ KENNETH J. KALEMBA
KENNETH J. KALEMBA

Sworn to before me this 4th day of January 1980.

/S/ LYNWOOD HAYES
LYNWOOD HAYES
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss:
SOUTHERN DISTRICT OF NEW YORK)

ANTHONY CAPUTO, being duly sworn, deposes and says:

1. I am employed as a Revenue Agent in the office of the District Director of the Internal Revenue Service ("IRS"), Newark District, with a post of duty at Mountainside, New Jersey.

2. In my capacity as an IRS Revenue Agent, I am conducting a joint investigation with Special Agent G. Robert Armstrong, a purpose of which is to ascertain the correctness of the tax returns filed by the Amerada Hess Corporation ("Hess") for the tax years 1972, 1973 and 1974. The investigation is continuing.

3. The testimony, books, records and other papers described in the summons annexed to the Petition as Exhibit B are not currently in the custody, possession or control of the IRS and it is necessary to examine such material in order to ascertain the correctness of the 1972, 1973 and 1974 returns of the taxpayer.

4. To my knowledge, no recommendation of any criminal prosecution in this case has been made to the Department of Justice by the IRS.

/s/ ANTHONY CAPUTO
ANTHONY CAPUTO

Sworn to before me this 4th day of January 1980.

LYNWOOD HAYES
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT G. MORVILLO, being duly sworn, deposes and says:

1. I am the attorney for the respondent-intervenor Amerada Hess Corporation. As such, I am familiar with the facts set forth herein. This affidavit is submitted in response to the affidavit of Katherine J. Trager, which affidavit was submitted in opposition to the motion of both respondents to stay the instant case or in the alternative to transfer the case to the United States District Court for the District of New Jersey.

2. The Trager affidavit opposes a stay on the grounds that 1) other enforcement proceedings in this case have been initiated in the Southern District of New York and 2) that the defenses interposed by Amerada Hess Corp. to the instant summons enforcement proceedings are not similar to the defense, presently before the Third Circuit. Both of these contentions are without merit.

3. It is simply irrelevant that two other summons enforcement cases (the Irving Trust case and the Tannenbaum case) were initiated in the Southern District of New York without Amerada Hess moving for a stay. There was

no reason in either of those cases to move for a stay since Amerada Hess Corp. made the decision to avoid the litigation by consenting to the documents being turned over. Consequently, Amerada Hess Corp. chose not to interpose any defenses to those summonses and there was, therefore, no reason to seek a stay.

4. The Government's contention that the case pending before the Third Circuit is not relevant to this proceeding is factually incorrect. While it is true that there are other defenses interposed to this proceeding that were not raised in the New Jersey litigation, it is clear from our original affidavits, submitted in support of this motion, that the identical defense of sole criminal purpose is raised here as it was in New Jersey. It is also clear beyond doubt that any decision by the Third Circuit with regard to the validity of this defense will impact upon the instant litigation. Indeed, the Third Circuit decision could well be totally dispositive and obviate the necessity of litigating this issue in any way.

5. Thus, the Government has advanced no good reason why the stay in this matter should not be granted. As noted in our original moving papers, this summons is 17 months old. To defer decision on its validity for several more weeks before the Third Circuit renders its decision is both economical and fair.

WHEREFORE, it is respectfully requested that the motion of respondents for a stay pending a decision of the Court of Appeals for the Third Circuit in *United States* v. *Amerada Hess Corp.*, Docket No. 79-1317 (3rd Cir. 1979) be granted and in the alternative that the motion of the respondents to transfer venue to the United States Court for the District of New Jersey be granted.

/S/ ROBERT G. MORVILLO
ROBERT G. MORVILLO

Sworn to before me this 17th day of December, 1979

/S/ KATHERINE HOR
KATHERINE HOR
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

AFFIDAVIT IN RESPONSE TO GOVERNMENTS MEMORANDUM OF LAW

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT G. MORVILLO, being duly sworn, deposes and says:

1. I am an attorney representing respondent-intervenor Amerada Hess Corporation ("Amerada") in the above-captioned case. As such, I am familiar with the facts set forth herein.

2. This affidavit is submitted on behalf of both respondents in response to the Government's memorandum of law and supplemental affidavits.

3. In an attempt to deflect the Court's attention from the serious defects of the instant summons, the Government in its papers has distorted the record to make it appear that Amerada has stonewalled all efforts of the Government to get access to its documents. These same assertions were repeated by the Government on oral argument.

4. These insinuations are totally inaccurate. Upon information and belief, since the inception of the civil audit of Amerada by the IRS in 1975, Amerada has received in excess of 325 civil document requests and to date has provided the documents sought in response to all but 11 of these

requests. Conservatively, Amerada estimates that the IRS has had access to or has received in excess of 40,000 pages of documents in response to these requests. The latest such request made by the Government was received on December 4, 1979 and the Company has supplied data as recently as January 3, 1980. Of the 11 outstanding requests, the Company is in the process of gathering the documents. In addition, the Amerada tax department has supplied oral answers to many IRS civil audit questions. Amerada estimates that between 1975 and 1979, some 11,500 man hours of Amerada personnel time have been expended on this audit. The oral and written requests have covered the entire gamut of the Amerada audit and include varied requests for such items as contracts for joint ventures with other oil companies, investment credit documents, leasing documents, minutes of Board of Directors meetings, 1099 forms, and consulting agreements. Moreover, as originally noted in paragraph 13 of the Oresman affidavit filed in opposition to the enforcement petition, an additional 18 document requests were given to Amerada relating directly to the so-called questionable payments. These requests asked for detailed information such as the names of the recipients of the sheep Amerada gave as gifts, documents relating to the disclosed $500 political campaign contribution and information relating to a used trailor sold to the St. Croix Police Department. All but two of these requests were answered. (Samples of document requests are annexed hereto as Exhibit A.)*

5. In addition, upon information and belief, Amerada has consented to N. Tannenbaum & Co. turning over approximately 5,000 pages of documents to the IRS and Irving Trust Co. turning over 1,500 documents to the IRS.

6. Finally, although Amerada has contested several of the summonses issued by the IRS in conjunction with its criminal investigation, Amerada has on several occasions offered to supply to the IRS many of the documents called

* It should be noted that in conjunction with the September 3, 1977 labelling agreement between the IRS and Amerada, this exhibit verifies that document requests issued before September 3, 1977 do not bear the initials of a Special Agent but those issued thereafter do.

for in all of the summonses in an effort to prevent litigation. In each instance, the IRS has flatly rejected any compromise short of total compliance with each and every item called for in all summonses.

7. Thus, it is both unfair and inaccurate to depict Amerada as being defiant (Reply Memorandum of Law in Support of Petition to Enforce an Internal Revenue Service Summons, hereinafter "Reply Memo", p. 46) or as having frustrated a "vital public interest" (Reply Memo, p. 45).

8. As noted above, the tactical decision to attack Amerada has undoubtedly been motivated by the inability of the Government to demonstrate the relevance of any of the documents requested in the instant summons. At oral argument, the Government conceded that it could not establish relevance until it actually examined the documents sought nor would it more precisely define the documents sought.

9. This assertion is difficult to comprehend when viewed in the context that since 1975 IRS has received in excess of 45,000 pages of documents relating to Amerada's tax return.

10. The inability of the IRS to define the relevance of the documents and its refusal to designate with more specificity the documents needed undoubtedly stems from the fiction which it has attempted to maintain herein that the summons seeks documents needed to ascertain the correctness of the Amerada tax returns. Surely after four years of access to the 45,000 pages of documents underlying these tax returns, the IRS should be able to point to their remaining specific questions or problems and articulate how the requested documents relate to such. Thus, the IRS posture as contained in its supplemental papers and the oral argument of carefully evading relevance, demonstrates that, in fact, these documents are being sought solely to further the criminal questionable payments investigation. As noted in our prior papers this constitutes an improper use of a summons.

11. As also noted in our prior affidavits, this precise legal issue with no substantial factual variation is presently before the United States Court of Appeals for the Third Circuit.

12. The Government's treatment of the appeal before the Third Circuit is extremely perplexing. In its opposition to respondents' motion for a stay premised upon the contention that a decision by the Third Circuit on the issue of sole criminal purpose would be binding in this case, the Government stated:

> "This proceeding simply does not involve 'the precise factual and legal issues' pending before the Third Circuit." (Trager Aff. dated December 17, 1979 filed in opposition to motion for stay, ¶ 8).

Several weeks later, the Government apparently changed its mind as to the identity of issues between this litigation and that pending before the Third Circuit. Now, the Government contends that respondents are collaterally estopped from litigating the sole criminal purpose defense in this District because of the findings of the District Court in the case before the Third Circuit (Reply Memo, pp. 15-19).

13. We submit that this attempt to have it both ways is, at the least, inappropriate. It is clear that the Third Circuit's decision will most probably bind both Amerada and the IRS on the sole criminal purpose defense and its outcome should be awaited if this Court decides to rule on the merits of this defense.

14. We believe, however, that it is unnecessary for the Court to reach the merits of the sole criminal purpose defense and reiterate that the Court should deny enforcement of the instant summons based upon the Government's failure to particularize the documents needed and to demonstrate relevance of any of the categories of documents called for in the summons.

15. It should also be noted that the Government's Reply Memo is replete with misstatements of fact and law.

For instance, the intimations contained in the footnotes on pages 15, 19 and 22, the suggestion that somehow the Couch case overrules the Harrington standard on p. 37 and the discussion of work product on p. 45, are all plainly erroneous. To refute each misstatement or miscitation would double the length of these papers without in any way further clarifying the issues. Suffice it to say that our failure to address each such error should in no way be construed as

an agreement with the Government's factual or legal assertions.

WHEREFORE, it is respectfully requested that the Court enter an order dismissing the petition.

/s/ ROBERT G. MORVILLO
ROBERT G. MORVILLO

Sworn to before me this 11th day of January, 1980.

/s/ KATHERINE HOR

Informal Document Request

Request No. 13

To (Name of Taxpayer and Company Division or Branch)
Emerald Electric, Inc. Canada

Subject Year: 1972 - 1973
Subj: Retained Earnings

Dates of Previous Requests

Description of Documents Requested

Year: 1972

1. Please provide supporting details for the following prior period adjustment to retained earnings - unappropriated in the year 1972:
Prior Period Adjustment - - - 1,792,081

Year: 1973

2. Provide supporting details for the following adjustments to retained earnings - unappropriated entitled "Transfer upon merger of subsidiaries and/or transfer of retained earnings" - - - $1,160,000

FROM

Name and Title of Requester
William E. Hendley, Case Mgr.

Date
10-21-75

Office Location
Washington, D.C.

Form 4564 (Rev. 1-74)

Part 1 - TAXPAYER'S FILE COPY

Informal Document Request

(5)

164

To (Name of Taxpayer and Company (Use name on Return))
Amerada Hess Corp.
R & M. Partners

Taxable year - 1972 - 1973
Amortization of Deferred Charges - Goodwill

Date of Document Request:

Description of Document Requested

1. Analysis of account 19-577
(Deferred Chgs. Amortization of Goodwill.)
indicates that you are amortizing goodwill.
Please provide the following.
(a) Name of companies involved
(b) Verification that the amount being amortized is not goodwill
(c) Nature of the item being amortized
(d) Verification of the basis by each Company
(e) Period of time the amount is being amortized over.
(f) Receivable amounts from the time of acquisition of the companies involved to the amount shown on General Ledger account # 19-577 as of 1-1-72, $ 510,330.99.

FROM

Name and Title of Requestor
Wm. E. Hartley, Case Mgr.

Office Location
Washington, D.C.

Date
3-23-76

4564 (Rev. 7-70)

Part 1 - TAXPAYER'S FILE COPY

Form 4564
Information Document Request

Request No. 1

To: (Name of Taxpayer and Company Division or Branch)
Amerada Hess Corporation and Subs.

Subject Year: 1974
Books & Records

Please return part II with listed documents to requester identified below.

Dates of Previous Requests

Description of Documents Requested

1. Please provide workpapers including balance sheet items, profit + loss items and Schedule M-1 adjustments for the following entities for the year 1974.

(a) Amerada Hess Corp.:
1. ~~E + P Tulsa Division~~
2. Corporate Headquarters Div.
3. R + M Division

(b) ~~Amerada Hess Corp of Abu Dhabi~~

(c) Amerada Hess Corp. of Iran /

(d) ~~Amerada Hess Corp of Peru~~ /

(e) Amerada Hess Corp. of Bermuda. /

(f) Amerada Minerals Corp. of Canada

(g) Amerada Petroleum Corp. of Norway /

(h) ~~Amerada Petroleum Corp of U.K.~~

(i) ~~Amerada Hess Mississippi Corp~~

(j) ~~Amerada Hess Export Company~~

(k) ~~Amerada Petroleum Corp. of Libya~~

FROM
Name and Title of Requester: William E. Hewlett Case Mgr.
Office Location: Mountainside, NJ

Date: 4-6-77

Form 4564 (Rev. 11-74) /

PART 1 TAXPAYER'S FILE COPY

Information Document Request

Request No. 37

To: (Name of Taxpayer and Com... Division or Branch)
Amerada Hess Corporation
"A" Division

Subject
1974
Schedule M-1 adjustments

Dates of Previous Requests

Description of Documents Requested

1. Please provide details for the following schedule M-1 adjustments:

(a) Adjustment #1

Catalyst expense - C.D.I. refinery 4p. 17,727

Accrued catalyst expense 17,727

Decrease in refinery reserve

Balance	A. Reading	Perma	Total (a/c 23-202)
1-1-74	115,107	61,671	176,678
12-31-74	99,662	59,389	158,951
	15,445	2,282	17,727

(b) Adjustment #2

Turnaround expense - C & S. refinery 4p. 2,800,155

Accrued Turnaround expense 2,800,155

Decrease in refinery reserve

Balance	A. Reading	Perma	Total (a/c 23-201)
1-1-74	4,907,125	1,707,883	6,615,008
12-31-74	2,144,905	1,669,748	3,814,853
	2,762,220	37,935	2,800,155

(c) adjustment #3

Insurance expense - other deductions 1,000,000

Reserve for self insurance 1,000,000

Decrease in reserve for self insurance Reserve for Rig Reserve for Total

Balance	A/c 27101	A/c 27101	A/c 27101	A/c 27101	
1-1-74	1,000,000	750,000	200,000	1,000,000	2,950,000
12-31-74	—	750,000	200,000	1,000,000	1,950,000
	1,000,000	—	—	—	1,000,000

KJK

FROM

Name and Title of Requester: Wm. E. Hunter, Jr., Case Mgr. : AC

Office Location: Morristown, N.J.

Date: 5-17-78

Form 4564 (Rev. 1-74)

PART 1 - TAXPAYER'S FILE COPY

437

Form 4564
(Rev. 1-78)

Department of the Treasury — Internal Revenue Service

Information Document Request

Request No. 43

To: (Name of Taxpayer and Company Division or Branch)
Guarantee Trust Corporation

Please return part 2 with listed documents to requester identified below

Subject: Form 1099 Year 1974

Dates of Previous Requests:

Description of Documents Requested

1. Provide Form 1099 for the following individuals:

Payee	Amount	Date Check Issued	Check No.
Mr. Jack Fisher Jr.	2,500	7/5/00	11-7777
Mrs. Arthur Frost	10,000		17-3-71
Mrs. Larry Robertson	2,000		10-14-1[illegible]
Mr. Charles D. Hartley	5,000		10-9617
Mr. E. Messer	5,000		09-02[illegible]6
Mr. T. Bradley	3,000		09-0273
Mrs. Arthur J. Watson	1,100		09-02[illegible]0
Jean Watkins	10,000		09-02[illegible]7
Mrs. T. E. Brown	7,000		09-02[illegible]4
Mrs. Billy Lee	5,000		09-[illegible]612
Mrs. John Thompson	4,000		09-1400
Mr. G. H. La Croix	2,500		09-6991
Mrs. Delmar Oppenfeldt	2,000		09-6872
Mr. F. La Rue	2,500		09-67[illegible]
Mrs. Brooks Brandon	2,500		09-[illegible]

FROM

Name and Title of Requester: T. G. Crosta, Team Coordinator

Date: 7-17-79

Office Location: Atlanta, Ga.

Form 4564 (Rev. 1-78)

Part 1 - TAXPAYER'S FILE COPY

PLF/DEFT EX 1 — FF
9-11-1979 PC

Form 4564 (Rev. Feb 79) — Department of the Treasury — Internal Revenue Service — E. Caballero

Information Document Request

Request No. 1.1

To: (Name of Taxpayer and Company Division or Branch)
Louisiana Land Exploration

Please return part 2 with listed documents to requester identified below

Subject
Year; Prod.
Ex Parte Drilling Costs

Dates of Previous Requests

Description of Documents Requested

1. An analysis of IDC regarding Louisiana Federal Offshore is shown below. For the leases indicated, provide details whether the wells included were drilled for exploration purposes primarily for oil or gas and the ultimate completion and whether they are drilled from mobile rig. In other words, are these wells exploratory wells. Provide AFE's for these wells.

For any well drilled for the production of oil + gas, provide AFE's and documentary evidence that they were so drilled.

Lease No.	State	RoA	Description of Property	IDC Claimed
4944	Louisiana Offshore	A31	W. Cameron Blk. 606 OCS-G-2232	$ 109,564
4944	"	A31	W. Cameron Blk. 621 OCS-G-2235	253,906
5065	"	A31	Eugene Island Blk. 57	1,015,167
5068	"	A31	Vermilion 5 Blk. 331 OCS-G-2572	713,142
5098	"	A31	Main Pass Blk. 1 OCS-G-2584	121,118
5133	"	A31	Vermilion Blk. 339-340	346,192

FROM
Name and Title of Requester: G. J. Caputo, Asst. Controller
Office Location: Metairie, La.
Date: 9-5-79

Form 4564 (Rev. 2-79)

Part 1 - TAXPAYER'S FILE COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M--18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT INTERVENOR.

REBUTTAL AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

Katherine J. Trager, being duly sworn, deposes and says:

1. I submit this rebuttal affidavit in response to the affidavit of Robert G. Morvillo, counsel for taxpayer-intervenor Amerada Hess Corporation and in further support of the petition of the United States to enforce the IRS summons served upon respondent Arthur Young & Co.

2. In his affidavit Mr. Morvillo states that the IRS has "flatly rejected any compromise short of total compliance with each and every item called for in all summonses." This is not a fair statement of the Service's position; to the contrary, Hess refused to turn over any and all documents sought in the summons when the Service stated it would not consent to withdraw certain items.

3. The Government's position with respect to its collateral estoppel defense has been consistent. As the government argued in connection with the transfer motion, the legal defense *common* to both actions was Hess's criminal purpose defense. (See ¶ 9 of the Trager affidavit submitted in opposition to the transfer motion).

4. The relevance of the materials sought is fully explained in the affidavits of G. Robert Armstrong and Harry Reiter and the Government's Reply Memorandum of Law.

/s/ KATHERINE J. TRAGER
KATHERINE J. TRAGER

Sworn to before me this 15th day of January, 1980

/s/ LYNWOOD HAYES
LYNWOOD HAYES
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT

and

AMERADA HESS CORPORATION, RESPONDENT INTERVENOR.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

HARRY REITER, being duly sworn deposes and says:

1. I am employed as a Case Manager in the office of the District Director of Internal Revenue, New York District with a post of duty at 120 Church Street, New York, New York. I have worked with the Internal Revenue Service since November 1945 and I am a certified public accountant. I submit this affidavit in support of the United States petition to enforce the IRS summons served upon Arthur Young & Co.

2. In my thirty-four years with the Service, including thirteen years as a Team Coordinator and Case Manager, I have had extensive experience conducting audits of large corporations. I am fully familiar with accounting practices, the functions of an audit, and the material prepared by accountants in the course of an audit.

3. I have reviewed the affidavit submitted by G. Robert Armstrong in support of this proceeding to enforce summons issued by the Internal Revenue Service. The items sought in this summons are clearly relevant to this proceeding because they would assist the Service in determining the correct taxable income and income tax liabilities for

Amerada Hess during the years under investigation. A brief explanation of the relevance of some of the accounting documents follows. The relevance of the other accounting materials sought is fully explained in Special Agent Armstrong's affidavit. The remaining items, numbered 14 through 17, pertain to specific factors involved in the investigation.

4. With respect to item 1 of the summons, the Engagement Letter, a review of this item would enable the Service to determine the nature of the audit, what areas respondent audited and what tasks were performed by the respondent.

5. The Management Letter, item 2, as explained in Special Agent Armstrong's affidavit, would set forth any deficiency in the record keeping methods which may result in an incorrect return. Put another way, the "Management Letter" to the client sets forth any deficiencies in internal control brought to light by the auditor's study and evaluation of the taxpayer's accounting system which may have resulted in the filing of an incorrect tax return. Such evaluation may also establish the level of culpability, that is, whether the internal controls were deficient at a low level ministerial or functional level or at the taxpayer's managerial level. At the very least, the management letter would indicate whether, in regard to the deficiencies highlighted by the accountant, the return was correct.

6. As a matter of clarification, the Representation Letter (item 3) is a form of disclosure from the client to the auditor which sets forth, among other things, statements as to the completeness and correctness of all liabilities, including possible additional income taxes, which are the result of the items improperly recorded on the taxpayer's books and also any other matter concerning which the auditor may have requested a representation.

7. Item 5, the standard work paper index, would assist the Service in determining whether it had obtained all the work papers of the taxpayer. If a document was noted on the index and it was not furnished to the Service, the index would help the Service determine the existence of the missing document.

8. Item 7, the work paper review file, would help identify the employees of the respondent who worked on different aspects of the audit. For example, if the Service had a question concerning the work papers furnished to the Service, the work paper review file would help to identify the employee of respondent who drafted the work paper. This individual could possibly also testify with respect to the taxpayer's records and its liabilities in regard to the particular area audited.

9. The engagement planning questionnaire (item 8), when read in conjunction with the engagement letter, would indicate the scope of the audit. Obviously, if the audit was not involved with areas which are the subject of the investigation it would be unnecessary to examine the records further.

10. The audit work papers file and tax pool analysis file are relevant because the items contained in those files would indicate the specific items of questionable deductibility that the taxpayer possibly claimed for the relevant tax years. The tax pool analysis file, or tax accrual papers file is compiled after the accountant has completed the audit and has identified various questionable items. To account for these questionable items, the accountant allocates a certain amount on the financial statement as a contingency for reserves. In order to arrive at the amount that should be carried as a contingency for reserves on the financial statement, the accountant must determine either that certain items are not deductible, or that there could reasonably be a liability with respect to these items. For example, the accounting firm could become aware of the liability in 1975 as a result of an improper deduction taken in 1972. Or, the accountant may question the treatment of a certain expenditure on the taxpayer's books. Both of these situations may result in the accountant allocating an amount to the contingency for reserves. It is only in the work papers and contingency for reserve files that these specific items are identified. Schedule M, for example, only shows the total contingency for reserves, and does not identify specific items. An examination of the specific items questioned would assist the Service in determining the tax-

payer's tax liabilities. For these reasons, both the audit work papers and the tax pool analysis, or contingency for reserves, files would obviously disclose information relevant to the taxpayer's income tax liabilities.

/s/ HARRY REITER
HARRY REITER

Sworn to before me this 15th day of January, 1980.

/s/ LYNWOOD HAYES
LYNWOOD HAYES
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA

v.

ARTHUR YOUNG & COMPANY, DEFENDANT.

Before: HON. KEVIN THOMAS DUFFY, *District Judge.*
New York, New York
January 3, 1980—11:30 a.m.

Appearances:
ROBERT B. FISKE, JR., Esq.,
United States Attorney
For the Government,
BY: KENT STAUFFER, Esq.,
Assistant United States Attorney.

OBERMAIER, MORVILLO, ABRAMOWITZ & FITZPATRICK, P.C.,
Attorneys for Defendant,
BY: ROBERT G. MORVILLO, Esq.,
of Counsel,

-and-

CARL D. LIGGIO, Esq.,
Attorney for Defendant.

[2] THE COURT: According to the calendar, there are two motions here.

MR. LIGGIO: I believe there is only one motion on the calendar, your Honor.

THE COURT: There had better be, because someone calendared two motions, a motion for a stay of proceeding, which Judge Werker denied, and if this is a rehearing of his denial, consider it reheard and denied again.

MR. MORVILLO: Your Honor, I don't think anyone calendared it. I think it was just simply a clerical mistake.

THE COURT: Okay. I took care of that one.

MR. LIGGIO: If it please the court, your Honor—

THE COURT: No, we will start with the government. I will be back to you.

MR. STAUFFER: Thank you, your Honor—

THE COURT: You won't thank me after I am finished with you.

MR. STAUFFER: This is a petition by—

THE COURT: I know what it is. You have fifteen categories here. Do you want the engagement letter? If so, why? That is category 1. Don't look at it; it is there.

[3] MR. STAUFFER: I am substituting for Ms. Trager, who is on trial, and I may be unfamiliar with the papers in the case.

THE COURT: What do you want the engagement letter for?

MR. STAUFFER: It may well be relevant to the scope of any inquiries that the auditors may have made.

THE COURT: How? You know they are engaged. Why do you want it?

MR. STAUFFER: The engagement letter defines the scope of any inquiries that an accounting firm may make. It may indicate particular areas of concern outlined. It is very difficult to tell.

In effect, a large part of the responses being made by Arthur Young and by Hess is to the extent—

THE COURT: How is it relevant?

MR. STAUFFER: It is relevant in determining the scope of inquiries that the auditors may have made.

THE COURT: You are starting an inquiry here and you don't know what the scope of the inquiry is?

MR. STAUFFER: How could we know, your Honor? We have not had an opportunity to examine documents. The whole argument here is that the government should know the answers before they ask the questions.

[4] THE COURT: Have you asked for this from Hess?

MR. STAUFFER: Hess, as your Honor is aware, has not complied, absent enforcement, with any of the summonses issued to it.

THE COURT: Did you ask it from Hess?

MR. STAUFFER: I do not know.

THE COURT: How about the management letter, what does that have to do with the relevancy to your investigation?

(Pause)

MR. STAUFFER: First of all, I direct your Honor's attention to the affidavit of G. Robert Armstrong, submitted in this case, and in particular the affidavit sworn to April 6, 1979—I am sorry, not in this case, with respect to N. Tannenbaum, but it contains a recitation of definitions with regard to these documents.

With reference to the management letter, as referred to by Agent Armstrong, who is involved in the investigation of Hess, the management letter is a letter from the respondent to the taxpayer describing the deficiencies in the taxpayer's records. That is obviously relevant to a determination of whether there is liability due, whether there is income tax reported—

THE COURT: All right. Representation letter?

[5] MR. STAUFFER: That is defined by Agent Armstrong as a letter from the respondent—

THE COURT: Again, in the affidavit in the other case?

MR. STAUFFER: A management letter is a term which applies generally to auditing firms.

THE COURT: The representation letter.

MR. STAUFFER: The same thing, your Honor, to the extent that the government is not in possession of any of the documents of Arthur Young, to require specification. This is the first summons I am aware of issued to Arthur Young in this case and to require the government to specifically identify—

THE COURT: Have summonses been issued to the taxpayer?

MR. STAUFFER: Yes, and they have not been complied with. The government doesn't have the documents, in large part. In any event, these documents are inherent records the auditor would have. Moreover, there is no prohibition against the government seeking records from whomever has them—

THE COURT: You don't have to get so hostile about it.

What do you need the history file for?

[6] MR. STAUFFER: The government has—I believe the government is not seeking enforcement with respect to the history file.

THE COURT: History file is withdrawn.

MR. STAUFFER: That is also true with respect to the—

THE COURT: You are withdrawing that now.

The standard workpaper index, what do you need that for?

MR. STAUFFER: Just a minute, your Honor. I am sorry, the history is being sought and I would direct your Honor's attention to the affidavit of Agent Armstrong in this case, sworn to July 19, 1979, which says that of the seventeen categories recited in the summons, the categories enumerated, 6 and 11 are not sought.

THE COURT: So the government submits, is that what you are saying? What happened to the history file?

MR. STAUFFER: The government is seeking production of the history file.

THE COURT: Why? What is it relevant to?

MR. STAUFFER: If I could see it, I could tell exactly what is in it, and absent seeing it—

THE COURT: Why don't you just file a subpoena saying, "Give us all your papers, each and every kind of [7] paper and make copies of them and let us rummage through everything in your files, and whatever we decide is relevant, then we can say it is relevant, and until such time as we see them we can't say it. So, Arthur Young, turn over your warehouse to us."

MR. STAUFFER: What is the alternative, where the government has not had an opportunity to inspect the records?

THE COURT: I ask you whether the government can go plopping through everybody's files willy-nilly?

MR. STAUFFER: The government has the right to subpoena whatever records may have bearing—

THE COURT: Do you want to withdraw this subpoena and issue a subpoena saying, "Give us all your files, all your files No. 1, No. 2, No. 3, No. 4," and you can break it down into "all your files"—

MR. STAUFFER: That objection can be made about everything the government asks for, unless it says, "Give us the sales receipts for the sale of an oil well; give us specific things like that."

That, I submit, is not what Congress had in mind—

THE COURT: Is there supposed to be some kind of reasonable limit on "all your files"? At this point [8] you tell me the investigation has no legitimate purpose. That is what you say to me.

MR. STAUFFER: I don't say that at all, your Honor.

THE COURT: You don't know what is relevant and you don't know what you are investigating.

MR. STAUFFER: Everything is relevant. The tax return is being audited here. Every commercial activity—

THE COURT: Why don't you ask for every paper in all the files?

MR. STAUFFER: Because we have explicitly set forth these categories to the extent the IRS can do it.

THE COURT: You are going to a third party, not to the taxpayer.

MR. STAUFFER: Because the third party has documents which may shed light on the tax returns of the corporation.

THE COURT: Why don't you go to the taxpayer first? Why haven't you gone ahead, as apparently you have, with enforcement against the taxpayer and abide the event as to third parties until you find out what you are looking for?

MR. STAUFFER: Abiding the events means it could [9] be drawn out for years and years.

THE COURT: That means you go through the normal process of court review. What you do is avoid court review in one ciruit by running into another circuit and trying to grab all the papers there.

MR. STAUFFER: Your Honor, that is not true. Any time we would seek papers from Arthur Young, we would come to this circuit because of the principal office being here.

I submit, your Honor, there is no basis in law—

THE COURT: There is no basis in law if you can't tell me what is relevant.

MR. STAUFFER: The relevance is that these documents may shed light upon the myriad commercial transactions that Amerada Hess engaged in.

THE COURT: Which transactions are you interested in?

MR. STAUFFER: Your Honor, this is an audit. Amerada Hess reported income taxes for all of their commercial activities. They are all subject to audit by the IRS. To say the IRS can only focus on things where they have a preexisting knowledge that—

THE COURT: You are dealing with a third party, not the taxpayer.

[10] MR. STAUFFER: Who has records bearing on the taxpayer.

THE COURT: It is still a different beast. You are dealing with a third party?

MR. STAUFFER: Yes, and that has no relevance to the scope of the summons.

THE COURT: Absolutely it does. Who do you think is going to pay for this?

MR. STAUFFER: The government.

THE COURT: For everything, including all of the expenses borne by Arthur Young? Yes or no. It makes a difference.

MR. STAUFFER: Your Honor, when Congress set forth the third-party summons provision, they anticipated the types of claims about burden Arthur Young is making here. In Section 7610 they provide for reimbursement of reasonable costs to comply with the summons.

THE COURT: Does that include paying for all the partners and all the rest of it who might be taken off in connection with this audit—if you are going to act like a spoiled boy, Counsel, sit down.

THE STAUFFER: I will simply refer your Honor to the terms of Section 7610, which defines the areas for which reimbursement may be sought. I submit that is a [11] sufficient basis for answering the burden claims they raise. I will note that the IRS has offered to conduct the inquiry at Arthur Young's office so that there will be minimal disruption, if any, of the normal auditing practices and procedures they are engaged in; there will be no transportation of rec-

ords from one office to another office in connection with that, if they would be willing to undertake it there and they can seek their reasonable costs under reasonable costs under Section 7610.

THE COURT: Any of these items you are willing to give to the government?

MR. LIGGIO: Yes, your Honor.

Back in1978, when Mr. Kalemba first served us with a subpoena, I said to him, "Look, you are overly broad, but if you tell us what you want by subject matter, and I think you are in a position to do that, you have audited Amerada Hess for years and you have the records available for '72, '73 and part of '74, notwithstanding the representations of the government—tell us what you want and we don't say you can't have the documents. We are prepared to work with you and make documents available to you and we are perfectly willing, if the government says they need something relating to drilling costs for the domestic production, you know, subject matter categories, [12] we will go into our papers and find them."

What we did not want to do was turn over to the government 250,000 pieces of paper and let them roam through it in areas which have no relevancy to the subject of the investigation, and in particular the one area, as my letter to you indicated and as my papers are particularly concerned about, the tax accrual papers.

I offered to the government, to Mr.Kalemba and Ms. Trager, to tell us what they want and we will make our personnel available—

THE COURT: Well, they won't tell me, either, so don't feel put out.

Mr. Morvillo?

MR. MORVILLO: With regard to that issue, Judge, I should point out to you that the focus of your question is entirely correct.

The IRS, since the inception of this audit in 1975, has given us some 400 civil document requests and we have given them documents in response to 398 of them. While the government contends that they have no ability to get any

information from Amerada Hess, that is simply totally inaccurate.

THE COURT: They can't figure out what is relevant; that is their problem.

[13] MR. MORVILLO: They have gotten hundreds of thousands of documents from us during the course of this audit. The real problem is that they have a questionable-payments investigation and what they are trying to do is to see whether or not there is anything in the entire warehouse of Arthur Young that relates to the questionable payments.

I would suggest to you, your Honor, the appropriate way to word the summons would be that, "Give us all documents in your possession relating to questionable payments."

We still have additional arguments pending in the Third Circuit and I don't want to waive.

THE COURT: I am not suggesting you have to waive.

MR. STAUFFER: Your Honor, if I might reply, there is no suggestion, from what Mr. Morvillo just said, that in all of the documents Hess may have turned over is included the documents sought by this summons. That is a necessary element that has to be shown.

THE COURT: Is there anything in all of these documents which Mr. Morvillo claims have been turned over which would indicate to you what you are looking for?

MR. STAUFFER: Your Honor, the requirement under [14] United States v. Powell, which is met by the affidavits in this case—

THE COURT: That is your opinion, Counsel.

MR. STAUFFER: There is no contravention of that in any other affidavits. I am not here to testify. I am referring to the affidavits that are of record.

THE COURT: Sit down.

Reserved.

MR. STAUFFER: I want to add one thing, your Honor.

THE COURT: No, you have added too much already.

MR. STAUFFER: With respect to the—

THE COURT: Counsel, up to this point, you have added not too much light, I must admit, and if this is going to be something enlightening, I will take it. Otherwise, forget it.

MR. STAUFFER: With respect to the claim by Hess and Arthur Young with respect to work product material, I want to bring to the Court's attention the decision of the Sixth Circuit in United States v. Upjohn, 600 F.2d 1223, Sixth Circuit (1979), where they held that the work product doctrine doesn't apply to summons-enforcement matters.

THE COURT: In certain situations. That is not [15] too enlightening.

MR. MORVILLO: We only got the government's papers yesterday.

Would your Honor give us until—

THE COURT: Friday.

MR. STAUFFER: Your Honor, is that for briefs or just affidavits?

THE COURT: They are replying.

MR. STAUFFER: They are not replying. This was the government's reply brief submitted to your Honor yesterday.

THE COURT: They want to make a comment about your reply brief.

— — —

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, INTERVENOR.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT G. MORVILLO, being duly sworn, deposes and says:

1. I am a principal in the firm of Obermaier, Morvillo & Abramowitz, P.C., counsel for Intervenor Amerada Hess Corporation (hereinafter "Amerada").

2. This affidavit is submitted in support of Amerada's and Arthur Young & Co.'s (hereinafter "Arthur Young") motion to reargue pursuant to Rule 9(m) of the General Rules of the United States District Court for the Southern District of New York and pursuant to Rule 60(b) of the Federal Rules of Civil Procedure to be relieved of the order of this Court dated August 26, 1980 enforcing in part an IRS summons served upon respondent Arthur Young.

3. The Court in its opinion (p.11) enforcing the summons as to the tax accrual files stated that "the IRS has made, by affidavit, the showing of relevance required by Powell". The Court appears to have interpreted this text to be that the documents sought "may be" relevant or "might have thrown light upon the correctness of the taxpayer's return". *See United States* v. *Noall*, 587 F.2d 123, 125 (2d Cir. 1978).

4. The affidavit submitted by the IRS (after oral argument on the motion and without permission of the Court) which the Court deemed sufficient to establish relevance states, in pertinent part:

> "The audit work papers file and tax pool analysis file are relevant because the items contained in those files would indicate the specific items of questionable deductibility that the taxpayer possibly claimed for the relevant tax years. The tax pool analysis file, or tax accrual papers file is compiled after the accountant has completed the audit and has identified various questionable items. To account for these questionable items, the accountant allocates a certain amount on the financial statement as a contingency for reserves. In order to arrive at the amount that should be carried as a contingency for reserves on the financial statement, the accountant must determine either that certain items were not deductible, or that there could reasonably be a liability with respect to these items. For example, the accounting firm could become aware of a liability in 1975 as a result of an improper deduction taken in 1972. Or, the accountant may question the treatment of a certain expenditure on the taxpayer's books. Both of these situations may result in the accountant allocating an amount to the contingency for reserves. It is only in the work papers and contingency for reserve files that these specific items are identified. Schedule M, for example, only shows the total contingency for reserves, and does not identify specific items. An examination of the specific items questioned would assist the Service in determining the taxpayer's tax liabilities. For these reasons, both the audit work papers and the tax pool analysis, or contingency for reserves, files would obviously disclose information relevant to the taxpayer's income tax liabilities." (Reiter affidavit, ¶ 10).

5. While the Reiter affidavit may be sufficient to establish the burden of the IRS in the ordinary general civil audit where the IRS seeks to verify deductions and discover whether the reserves undercut claimed deductions, given the facts of this case, where the IRS concerns are far more

specific and defineable, we believe that the Reiter affidavit is factually and legally insufficient.

6. This is not the ordinary civil audit wherein the IRS seeks generally to verify the accuracy of the tax return in question. Rather the instant summons was issued by a Special agent of the IRS in furtherance of a joint investigation, the civil aspects of which have, the Company understands, been substantially concluded, expect for a portion of the 1974 investigation.

7. The criminal phases of this joint investigation are not yet completed. They are described in the affidavit of G. Robert Armstrong, annexed to the petition to enforce, as follows:

> "The taxpayer has disclosed that it maintained a fund called a 'special disbursements account.' From this fund, it made political contributions, some of which were reimbursed to the actual contributor, and charged to 'legal fees,' gave gifts to foreign government employees and deducted the same as 'other deductions;' gave sums to members of local police and fire departments and deducted the same as 'cleaning services,' made payments, which were deducted, to a foreign 'expeditor,' and engaged in other possibly illegal activity. The taxpayer formed a Special Committee of its Board of Directors to investigate the practices of the corporation and its subsidiaries with respect to cash funds, payment to foreign government officials, and illegal, non-deductible, or questionable payments. A Report to the Board of Directors by the Special Committee regarding the questionable payments disclosed the respondent's participation in the Special Committee's investigation.

8. More recently, in a related litigation pending in the United States District Court for New Jersey, after referring to the Special Committee's investigation, Armstrong swore:

> "My investigation concerns the same payments and accounting procedures. Under the revenue laws, bribes, kickbacks and improper or illegal payments are not deductible corporate expenses, and the false accounting for such deductions (if taken) might constitute tax evasion.

"My investigation therefore concerns whether and to what extent Amerada may owe additional taxes or may have violated the criminal provisions of the Internal Revenue Code, and specifically but not exclusively whether it evaded its taxes for the years under investigation through the use of slush funds or other 'questionable' payments."

9. Thus, unlike the ordinary civil audit where the Court is faced with determining what "may be" relevant in the abstract, the instant fact situation permits the Court to determine with precision whether the tax accrual files "may be" relevant to the specific issues being scrutinized by the IRS in this case.

10. Indeed since the original papers were filed with the Court in January, 1980, the IRS has conducted 36 sworn interviews of employees, officers and directors of Amerada. These interviews (the transcripts of which are being filed with the Court as part of these papers)* demonstrate unequivocally the precise areas of the instant investigation. All of the interviews have been virtually identical in terms of questions asked.

11. In specific terms, they deal with

a. one $200 illegal political campaign contribution (which was fully and accurately reflected on the corporate books);
b. two political campaign contributions totalling $550, one of which was possibly illegal, made by a foreign subsidiary to local politicians in the Virgin Islands (and not deducted on Amerada's Federal tax return);
c. transactions in Abu Dhabi, Iran and Ecuador;
d. payments intended for local police and fire officials.

In addition, all witnesses have been asked general questions about whether they have knowledge of any other foreign or domestic bribes, kickbacks, slush funds or corporate political campaign contributions and all have answered negatively.

---

*These transcripts will be referred to hereinafter as "Appendix" with the name of the witness and the page of the deposition.

12. Specific analysis of the 36 sworn interviews that have taken place to date supports our position that the tax accrual file is irrelevant. As noted above, the agents in charge of of the joint investigation have asked each witness almost the exact same questions. These questions are broken up into eight series of documents pertaining to so-called questionable payments. Indeed, examination of these areas in the context of the Amerada tax returns demonstrates that they are absurd on their face and are no longer being asked for any legitimate purpose.

13. *Husseim Awadba and Abu Dhabi*—The agents have asked each witness about Husseim Awadba, a resident of the country of Abu Dhabi and his receipt of $613 in 1973 and $718 in 1974. The agents have been informed by Mr. Cassidy, an assistant controller that Mr. Awadba was "a messenger-type person" who would assist Amerada with visas and the like. (Appendix, Cassidy 19-21). No one, including the Special Committee, implicated Mr. Awadba in any improper or questionable activities.

The agents have also asked whether any witness has knowledge of bribes, kickbacks and the like to government officials in Abu Dhabi and have received a universal no.

14. *Gifts to Government officials in Abu Dhabi*—Among the findings of the Amerada Special Committee was the fact that *petty* gratuities were given to some foreign officials in the form of sheep, wristwatches and the like. The agents have asked all witnesses about such gifts in Abu Dhabi and have been informed that various officials were given four pieces of crystal (wedding gift), one color t.v., one gold watch and some sheep (at the conclusion of Ramadam, a religious holiday). (Appendix, Trynin 7-15, Cassidy 26-29). No large or corruptive type gifts have been suggested.

15. *Gratuities to local police and fire officials*—The Amerada Special Committee reported that payments had been made by the Company to local police and fire officials amounting to approximately $2,000 per year. When the Company became aware that these payments had been improperly recorded on the books of the Company, it quickly consented to the disallowance of these deductions.

The Agents have questioned all witnesses about these payments and have been informed that these payments were being made to obtain the good will of the police in a high crime area in connection with a local gas station when the company purchased the station in the 1960's. They continued until 1976 when they were discontinued shortly before the Special Committee was created. (Appendix Goldberg 11-16; Moody 10-16, Mahaney 11).

16. *Use of the Corporate Aircraft*—The Agents have shown each witness certain extracts from the log of the corporate aircraft. They have focused on two or three trips of three officials of the National Iranian Oil Company and have been informed that Amerada and the National Iranian Oil Company were working on a joint venture of building refining units in the Virgin Islands. The Iranian officials wanted to visit the refineries and, while in the Virgin Islands, several other islands. Thus, the trips were for legitimate business purposes. (Appendix, Hess p. 24).

They have also inquired as to knowledge of any bribes or kickbacks to Iranian Government officials and have again been assured by all witnesses that no such bribes or kickbacks took place.

17. *Azar-Pey and Ghadami-Navai*—The Agents have asked all witnesses about Messrs. Azar-Pey and Ghadami-Navai, residents of Iran and have been informed that both of these gentlemen were employees of the National Iranian Oil Company (NIOC) and were assigned by NIOC to work at Bushco—an Amerada/NIOC joint venture. Because these gentlemen were being asked to work in accordance with American standards and hours, rather than Iranian, they were given extra compensation by Amerada for their additional work with the full knowledge of NIOC. (Appendix, Hess deposition, p. 27-29).

18. *$750 of political campaign contributions*—The Agents have inquired of each witness about the purchase of tickets to a luncheon for Julia Butler Hansen, who was running for Congress in 1972. They have been informed Mr. Hess authorized the purchase of $200 worth of tickets. Since this contribution was listed accurately on the books

and records of Amerada, it is clear that the deduction was inadvertent.

The agents have also inquired about two other political campaign contributions in the amount of $550 made with corporate funds. However, neither of these contributions was deducted by Amerada since they involved funds of Hess Oil Virgin Islands which is a foreign corporation and not a part of Amerada's consolidated return.

19. *Dr. Burneo and Ecuador*—The agents have inquired about Amerada's payment of consulting fees to Dr. Raymon Burneo, who was the Ecuadorian Ambassador to West Germany. Again the answers have indicated that these were legitimate payments for consulting services and, in addition, were charged to a foreign subsidiary not included in Amerada's consolidated return and thus have no U.S. tax consequences. (Appendix, Jacobson 25-30).

Indeed, the Company went beyond the interviews in this instance to supply the IRS with documentary proof positive of these facts. (See Exhibit A annexed hereto.) Despite this documentation the agents, by rote, continued to inquire on this matter of all witnesses.

20. *J. Yagchi and Abu Dhabi*—The agents have inquired about J. Yagchi, his corporation and one of his employees in Abu Dhabi. They have been informed that Mr. Yagchi and his employees gave advice about local problems and supplied services to the company in Abu Dahbi such as translation of documents, customs matters and the like. (Appendix, Trynin 30, O'Brien 16). Nothing improper or questionable has ever been suggested about these services.

21. In addition to the foregoing specific question areas, the Agents have asked each witness generally about domestic and international bribes, kickbacks, slush funds and secret bank accounts. In every instance, the witnesses have stated that there were no such questionable payments other than as described in paragraphs 13 to 20 above.

22. The foregoing demonstrates clearly that IRS now has more than sufficient information to make an informed judgment about the company's tax liability in the questionable payment area. The IRS has received detailed answers about each specific transaction under investigation. With

the exception of the one $200 campaign contribution for luncheon tickets and the $2,400 per year payments to police and fire officials, there are no questionable items.

These interviews should be viewed in the context that they are completely consistent with the findings of the Special Committee.

The Special Committee was composed of Mr. Ricardo A. Mestres (a retired financial Vice President of Princeton University); Mr. Jack G. Copeland, Jr. (retired Vice President and Director of Hercules, Inc.); Mr. Harry C. Hagerty (retired Vice Chairman of Metropolitan Life Insurance Co.); and, Mr. William S. Renchard (formerly Chairman and Chief Executive Officer of Chemical Bank). It was assisted by the law firm of Milbank, Tweed, Hadley & McCloy and the accounting firm of Arthur Young. It is doubtful in the extreme that any of the aforementioned participants would file a dishonest report.

In addition, it should be noted that two directors, who were members of the Special Committee and four of the top officers of the Company filed affidavits indicating that they know of no other questionable payments other than those listed above.

23. A partner of Arthur Young in a letter sworn to under penalty of perjury has affirmed these affidavits. Because that partner was in charge of the Amerada audit and had access to the tax accrual file, he could not have affirmed those affidavit if the tax accrual file contained any additional or inconsistent evidence of questionable payments.

24. Thus, in the face of the Special Committee report, the affidavits of the officers and directors of the Company, the sworn affirmance of Arthur Young and the sworn testimony of 36 employees, officers and directors of the company, all of which reveal a total of some $8,000 of questionable payments in years during which the Company paid $57,000,000 in federal income taxes, one must challenge the good faith of the IRS in contending that the tax accrual file is relevant.

25. Thus, the pertinent question before the Court should no longer be whether the tax accrual files may be relevant to some general verification of Amerada's tax liability since

the Company understands that the IRS has satisfied itself as to all issues for 1972 and 1973 and substantially all issues for 1974 other than the open questionable payments investigation for the three years. Rather, we submit that the question is whether the tax accrual file "may be" relevant to the specific open items, to wit, the alleged questionable payments under continuing investigation.

26. Arthur Young has submitted the affidavit of Bruce Greenwald (annexed as Exhibit B to the answer of Arthur Young) which affidavit states that a review of the tax accrual workpapers reveals "no information whatever in the tax accrual workpapers relative to any alleged bribes or other matters covered by the Special Commiteee's Report" (affidavit of Bruce Greenwald, Dec.26, 1979). Thus, unless this affidavit is questioned or refuted in some way by the IRS, there is nothing in the record to sustain the burden of the IRS of demonstrating the relevance of the tax accrual file to questionable payments.

WHEREFORE, it is respectfully submitted that the within motion be granted and that the Court enter an order denying the enforcement of the summonses.

/S/ ROBERT G. MORVILLO
ROBERT G. MORVILLO

Sworn to before me this 17th day of September, 1980.

/S/ KATHERINE HOR
KATHERINE HOR
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ANTHONY CAPUTO, being duly sworn, deposes and says:

1. I am employed as a Revenue Agent in the office of the District Director of the Internal Revenue Service ("IRS"), Newark District, with a post of duty at Mountainside, New Jersey. In my capacity as an IRS Revenue Agent, I am conducting a joint investigation with Special Agent G. Robert Armstrong, one purpose of which is to ascertain the correctness of the tax returns filed by the Amerada Hess Corporation ("Amerada" or "the taxpayer") for the tax years 1972, 1973 and 1974.

2. The civil aspects of the investigation are open and ongoing for each of the tax years under investigation. While with respect to certain matters the IRS has informed Amerada of proposed civil tax adjustments, no formal report of examination has been issued to the taxpayer. The proposal of adjustments during the course of a civil audit is a routine IRS procedure, and the fact that proposed adjustments have been made to a taxpayer does not preclude further adjustments in the event evidence of additional liability is obtained.

3. The tax pool analysis files developed by Arthur Young & Company ("Arthur Young") for Amerada are relevant to the civil audit because the information contained in those files reasonably may be expected to indicate specific items of questionable deductibility that Amerada possibly claimed for the relevant tax years and could provide the basis for adjustments of Amerada's tax liability. The information, for example, also may bear upon the issue of corporate intent, a factor pertinent to the assessment of civil fraud or other penalties.

4. Because this is a joint investigation, the tax pool analysis files which are relevant to the civil audit have been requested by Special Agent Armstrong. Neither the tax pool analysis files nor, to my knowledge, the data contained within them, are in the possession of the IRS. It is necessary for the IRS to examine the Arthur Young tax pool analysis files in order that the civil audit of Amerada may be completed and the correctness of the tax returns filed by Amerada for the years under investigation may be ascertained.

/s/ ANTHONY CAPUTO
ANTHONY CAPUTO

Sowrn to before me this 21st day of November, 1980

/s/ PAULINE P. TROIA
PAULINE P. TROIA
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304 (KTD)

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

G. ROBERT ARMSTRONG, being duly sworn deposes and says:

1. I am employed as a Special Agent in the Office of the District Director of Internal Revenue, Newark District, with a post of duty at Toms River, New Jersey. In my capacity as a Special Agent, I am conducting a joint investigation with Revenue Agent Anthony Caputo, one purpose of which is to ascertain the correctness of the tax returns filed by the Amerada Hess Corporation ("Amerada") for the tax years 1972, 1973 and 1974.

2. This is a joint investigation conducted by the Examination and Criminal Investigation Divisions. The investigation is continuing to date. No recommendation for criminal prosecution has been made by the Internal Revenue Service to the Department of Justice with respect to the matters under investigation. I have not yet made, nor am I yet in a position to make, any recommendation one way or the other to my supervisor pending further investigation.

3. One aspect of the joint investigation concerns whether Amerada evaded its taxes for the years under investigation through the use of "slush funds" or other questionable pay-

ments. Between the dates June 2, 1980 through August 27, 1980, I conducted 36 sworn interviews with employees, officers and directors of Amerada, as well as two partners of Arthur Young & Company ("Arthur Young"), an accounting firm retained by Amerada during the years under investigation. The names of the 36 individuals I interviewed were provided to me by Amerada as persons who previously had been interviewed by a Special Committee formed by Amerada's Board of Directors to investigate the practices of the corporation and its subsidiaries with respect to cash funds, payments to foreign government officials, and illegal, nondeductible or questionable payments. Based upon information which had been disclosed by Amerada at that time concerning possible illegal or questionable payments made by Amerada, I questioned each of the witnesses concerning his personal knowledge of such matters.

4. In addition, I posed certain questions to the members of Arthur Young whom I interviewed concerning whether Arthur Young maintained tax pool analysis files for Amerada for the years under investigation. I was informed that Arthur Young maintained such files, but I was not permitted to inspect such files nor was I provided with any facts as to the specific information contained in the files. Nothing which I learned from the aforesaid 36 interviews has caused the IRS to narrow the scope of the joint investigation in any fashion, and the IRS's inquiry continues as to all aspects of Amerada's tax liability for the tax years 1972, 1973 and 1974.

5. It is necessary for me to examine the Arthur Young tax pool analysis files in order that I may ascertain the correctness of the tax returns filed by Amerada for the years under investigation and determine whether and to what extent Amerada may owe additional taxes or whether the assessment of civil penalties is warranted. The tax pool analysis files are highly relevant to this investigation because the items contained in these files would disclose, among other matters, the specific items of questionable deductibility that Amerada may have claimed for the tax years under investigation. Neither the tax pool analysis files nor, to my knowledge, the data contained within them are in the possession

of the IRS. Because the IRS has not been permitted to review the tax pool analysis files, the IRS cannot determine whether information disclosed to date by Amerada in the interviews and otherwise is corroborated or impeached by the tax pool analysis files or whether data contained in these files would disclose additional areas of tax liability.

/s/ G. ROBERT ARMSTRONG
G. ROBERT ARMSTRONG

Sworn to before me this 21th day of November, 1980.

/s/ PAULINE P. TROIA
PAULINE P. TROIA
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

REPLY AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT G. MORVILLO, being duly sworn, deposes and says:

1. I am a member of the firm of Obermaier, Morvillo & Abramowitz, P.C., attorneys for respondent-intervenor Amerada Hess Corp. ("Amerada"). This affidavit is submitted in response to the affidavits of Agents Armstrong and Caputo which were submitted in opposition to respondent's motion for reargument of and relief from this Court's order of October 26, 1980 enforcing an IRS summons.

2. It is submitted that the affidavit of Revenue Agent Caputo demonstrates that Amerada's argument herein is valid. Caputo conceded that he has already given proposed civil tax adjustments to Amerada. (Caputo Affidavit, November 21, 1980, ¶ 2). While IRS has the power to amend these at any time before settlement, it is clear that they would not be given out unless the civil audit is substantially completed. Certainly if there was any real civil purpose in attaining the tax pool analysis documents, such adjustments would have been withheld until the documents were produced.

3. The Caputo affidavit represents a clear attempt to divert the Court's attention from the real and already articulated motive of IRS for seeking the tax pool analysis documents. Arguing that the civil audit is still technically open and that therefore the IRS may change their proposed adjustments after reviewing the documents begs the question of relevance.

4. In determining the issue of relevance of the tax accrual files, the Court should consider not what the theoretical basis of the summon is, but the true purpose for this particular summons issuance. The record of this proceeding indicates clearly that the sole motive for seeking the tax pool documents is to determine whether they contain information helpful and relevant to the criminal investigation.

5. Thus, in the original petition seeking enforcement Agent Armstrong supported the summons for the documents in question as follows:

> "*Tax Pool Analysis File*—(Tax contingency file) File containing a memorandum, letter or other document, which recommends to the taxpayer that possible contingent liability for taxes be set up. *For example, if the taxpayer had paid bribes overseas and this was discovered by respondent, then the respondent would have the taxpayer set up a contingent liability for taxes.* (Emphasis added). (Armstrong affidavit, July 19, 1979).

6. Moreover, at the very beginning of the criminal investigation, Amerada and IRS *agreed* that information desired for the civil audit would come from Revenue Agent requests and information sought for the criminal investigation would come from Special Agent requests. The instant summons was issued by the Special Agent.

7. When viewed in the context of the fact that IRS has already determined the proposed civil tax adjustments, there can be no other conclusion than that the true motive of IRS for requesting these documents is for the questionable payments criminal investigation. Thus, the Court must look to the scope of the criminal investigation in determining the issue of relevance.

8. As noted in our original papers, the scope of the criminal investigation, to wit, improper or questionable pay-

ments, has long been known. Our original papers also demonstrate conclusively that nothing in the tax pool analysis document is relevant to the questionable or improper payments inquiry. Thus, the summons should not be enforced because it seeks documents which are not relevant to the purpose for which it has issued.

9. At a very minimum, it is suggested that respondents are entitled to a hearing to demonstrate that the documents sought are not relevant to the purpose underlying the summons.

/s/ ROBERT G. MORVILLO
ROBERT G. MORVILLO

Sworn to before me this 8th day of December, 1980.

/s/ KATHERINE HOR
KATHERINE HOR
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304 (KTD)

UNITED STATES OF AMERICA, PETITIONER

v.

ARTHUR YOUNG & COMPANY, RESPONDENT,

and

AMERADA HESS CORPORATION, RESPONDENT-INTERVENOR.

ORDER AND JUDGMENT

This proceeding having been brought on by petitioner United States of America by order to show cause issued October 9, 1979 to enforce an Internal Revenue Service ("IRS") summons served upon respondent Arthur Young & Company on April 17, 1978, and the Court having issued an opinion dated August 26, 1980, granting the United States' petition in part and denying it in part, and thereafter the Court having granted respondents' motion for reconsideration and upon reconsideration having adhered to and reaffirmed its August 26, 1980 opinion, and petitioner having moved for entry of an order and judgment and for clarification of the Court's August 26, 1980 opinion, it is therefore

ORDERED that the Court's opinion dated August 26, 1980 be modified to delete therefrom the word "workpapers" from the last line of page 12 of the slip opinion and, further, to delete the words "and workpapers" from the fifth line of page 14 of the slip opinion, and it is further

ORDERED that the petition of the United States of America to enforce the IRS summons upon respondent Arthur Young & Company on April 17, 1978, is granted to the extent set forth below, and it is further

ORDERED AND ADJUDGED that respondent Arthur Young & Company appear before IRS Special Agent G. Robert Armstrong, or his designated representative, at

10:00 A.M., within twenty (20) days of the entry of this order and judgment, at the offices of respondent where the documents to be produced are located or at an alternative location to be agreed upon by the Special Agent and respondent, then and there to be sworn, to give testimony and to produce for examination and copying the books, records and other papers demanded in the IRS summons served upon respondent on April 17, 1978, with the exception of item "11", the audit program file(s); item "12", the audit workpapers file(s), but only to the extent that the audit program is contained within these file(s); and item "14", the Special Committee workpapers, the examination to continue from day to day until completed.

DATED: New York, New York
FEBRUARY 23, 1981

/S/
United States District Judge

/s/ RAYMOND F. BURCHARDT,
Clerk

/S/ _____
Deputy Clerk

In the Supreme Court of the United States

No. 82-687

UNITED STATES, PETITIONER,

v.

ARTHUR YOUNG & COMPANY, ET AL.

ORDER ALLOWING CERTIORARI. Filed February 22, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.